CS/CS/SB 350 by **GO, HP, Abruzzo**; (Similar to CS/CS/H 0019) Public Records/Yellow Dot Critical Motorist Medical Information Program

CS/CS/SB 976 by **JU, HP, Bean**; (Similar to CS/H 1179) Home Health Care

CS/SB 862 by **JU, HP**; (Compare to H 1381) Prescription Drug Monitoring

CS/SB 866 by **GO, HP**; OGSR/Department of Health

SB 922 by **Brandes**; (Identical to H 0827) Renewable Energy Source Devices

CS/SB 414 by **ED, Dean**; (Similar to CS/H 0993) Public Records/Animal Researchers

CS/SB 764 by **JU, Detert**; (Similar to CS/CS/H 0429) Hearsay

387314	A	S	RS	RC, Smith	Delete L.15 - 18:	04/09 08:23 PM
654744	SA	S	WD	RC, Smith	Delete L.15 - 18:	04/09 08:23 PM
732958	SA	S	RCS	RC, Smith	Delete L.15 - 18:	04/09 08:23 PM
676158	AA	S	RCS	RC, Richter	Delete L.10:	04/09 08:23 PM

CS/SB 1318 by **CA, Evers**; (Similar to CS/H 1051) Public Records and Meetings/Public-private Partnerships

SB 386 by **Hays**; (Identical to H 0903) Application of Foreign Law in Certain Cases

CS/SB 1140 by **MS, Hays**; (Identical to CS/H 7011) Public Records/Division of Emergency Management/Emergency Planning

CS/SB 608 by **MS, Hukill**; (Compare to CS/H 0731) Monuments on the Capitol Complex

629070	D	S	RCS	RC, Simmons	Delete everything after	04/09 08:24 PM
968080	AA	S	RCS	RC, Smith	btw L.69 - 70:	04/09 08:24 PM

CS/SM 368 by **GO, Simpson**; (Identical to CS/H 0261) Constitutional Convention/Single-Subject Requirement for Federal Legislation

CS/SB 372 by **AP, Galvano**; (Similar to H 0241) Developments of Regional Impact

SB 1046 by **Galvano**; (Similar to CS/CS/H 0865) Public Records/Motor Vehicle Crash Reports

596104	D	S		RC, Galvano	Delete everything after	04/08 04:05 PM
585894	A	S		RC, Galvano	Delete L.12 - 45:	04/08 01:55 PM

CS/CS/SB 808 by **GO, RI, Galvano**; (Similar to CS/CS/H 0775) Public Records/Florida State Boxing Commission

CS/SB 650 by **GO, JU**; (Similar to H 7101) OGSR/Inventories of an Estate or Elective Estate

SB 566 by **Lee**; (Identical to H 0557) Florida Bright Futures Scholarship Program

CS/CS/SB 602 by **JU, EE, Latvala**; (Similar to H 0495) Residency of Candidates and Public Officers

442740	A	S	RCS	RC, Latvala	btw L.134 - 135:	04/09 08:25 PM

CS/SB 1226 by **ED, Montford**; (Similar to H 7031) Education

913102	A	S	RCS	RC, Montford	btw L.464 - 465:	04/09 08:25 PM
248138	A	S	WD	RC, Ring	btw L.1026 - 1027:	04/09 08:25 PM
132132	AA	S	WD	RC, Ring	Delete L.7:	04/09 08:25 PM

CS/SB 1396 by **ED, Montford**; (Similar to CS/H 0543) Public Records and Meetings/Public-private Partnerships/State Universities

173944	A	S	RCS	RC, Montford	Delete L.23 - 28:	04/09 08:25 PM

CS/SB 840 by **HP, Richter**; (Similar to CS/CS/H 0711) Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board

CS/CS/SB 1278 by **GO, BI, Richter**; (Similar to CS/CS/H 0675) Public Records/Office of Financial Regulation

CS/SB 990 by **GO, Ring**; (Similar to H 1357) Public Officers and Employees

SB 1678 by **GO**; (Similar to H 7143) OGSR/Agency Personnel Information

CS/CS/SB 1308 by **JU, BI, Simmons**; (Similar to CS/H 1271) Insurer Solvency

SB 1698 by **BI**; (Similar to H 7097) Ratification of Rules of the Office of Insurance Regulation

CS/SB 1526 by **JU, Thrasher**; (Similar to CS/CS/H 7087) Public Records/Department of Legal Affairs

300950	A	S	RCS	RC, Thrasher	Delete L.38:	04/09 08:26 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, April 9, 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	**CS/CS/SB 350** Governmental Oversight and Accountability / Health Policy / Abruzzo (Similar CS/CS/H 19, Compare CS/CS/H 17, Link CS/S 262)	Public Records/Yellow Dot Critical Motorist Medical Information Program; Providing an exemption from public records requirements for personal identifying information of participants in a yellow dot critical motorist medical information program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. TR 01/09/2014 Favorable HP 02/11/2014 Fav/CS GO 04/03/2014 Fav/CS RC 04/09/2014 Favorable	Favorable Yeas 13 Nays 0
2	**CS/CS/SB 976** Judiciary / Health Policy / Bean (Similar CS/H 1179)	Home Health Care; Exempting certain home health agencies from specified licensure application requirements; requiring a licensed nurse registry to ensure that each certified nursing assistant and home health aide referred by the registry present certain credentials; requiring that certain records be kept in accordance with rules set by the Agency for Health Care Administration; providing that a nurse registry does not have an obligation to review and act upon such records except under certain circumstances, etc. HP 03/05/2014 Fav/CS JU 04/01/2014 Fav/CS RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
3	**CS/SB 862** Judiciary / Health Policy (Compare H 1381, CS/S 866)	Prescription Drug Monitoring; Revising provisions relating to the comprehensive electronic database system and prescription drug monitoring program maintained by the Department of Health; requiring the department to adopt a user agreement by rule; authorizing the department to provide relevant information that does not contain personal identifying information to a law enforcement agency if the program manager determines that a specified pattern exists; repealing language creating a direct-support organization to fund the program, etc. JU 04/01/2014 Fav/CS RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 866** Governmental Oversight and Accountability / Health Policy (Compare CS/S 862)	OGSR/Department of Health; Amending a provision which makes confidential and exempt certain information of a patient or patient's agent, health care practitioner, and others held by the Department of Health; specifying that the Attorney General, health care regulatory boards, and law enforcement agencies may disclose certain confidential and exempt information to certain entities only if such information is relevant to an active investigation that prompted the request for the information; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 04/03/2014 Fav/CS RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
5	**SB 922** Brandes (Identical H 827, Compare HJR 825, Link SJR 916)	Renewable Energy Source Devices; Prohibiting consideration by a property appraiser of the increased value of real property due to the installation of a renewable energy source device by an end-use customer; revising the definition of the term "renewable energy source device", etc. CU 03/04/2014 Favorable CA 04/01/2014 Favorable RC 04/09/2014 Temporarily Postponed	Temporarily Postponed
6	**CS/SB 414** Education / Dean (Similar CS/H 993)	Public Records/Animal Researchers; Providing an exemption from public records requirements for personal identifying information of certain animal researchers at public research facilities, including state universities; providing for retroactive applicability of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. ED 03/25/2014 Fav/CS GO 04/03/2014 Favorable RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
7	**CS/SB 764** Judiciary / Detert (Similar CS/CS/H 429)	Hearsay; Providing that certain statements are an exception to the hearsay rule and thus admissible, etc. JU 03/18/2014 Fav/CS CJ 03/31/2014 Favorable RC 04/09/2014 Fav/CS	Fav/CS Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 1318** Community Affairs / Evers (Similar CS/H 1051)	Public Records and Meetings/Public-private Partnerships; Creating an exemption from public records requirements for unsolicited proposals for a qualifying public-private project received by a responsible public entity for a specified period; creating an exemption from public meetings requirements for portions of meetings at which confidential and exempt information is discussed; requiring a recording to be made of a closed portion of a meeting; providing for future repeal and legislative review of the exemptions; providing statements of public necessity, etc. CA 03/19/2014 Fav/CS GO 04/03/2014 Favorable RC 04/09/2014 Favorable	Favorable Yeas 13 Nays 0
9	**SB 386** Hays (Identical H 903)	Application of Foreign Law in Certain Cases; Specifying the public policy of this state on the application of a foreign law, legal code, or system in proceedings brought under or relating to chapter 61 or chapter 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution, etc. JU 03/25/2014 Favorable GO 04/03/2014 Favorable RC 04/09/2014 Favorable	Favorable Yeas 7 Nays 6
10	**CS/SB 1140** Military and Veterans Affairs, Space, and Domestic Security / Hays (Identical CS/H 7011)	Public Records/Division of Emergency Management/Emergency Planning; Creating an exemption from public records requirements for information furnished to the Division of Emergency Management by a person or business for the purpose of obtaining assistance with emergency planning; providing for retroactive application of the exemption; providing for future repeal and legislative review of the exemption; providing a statement of public necessity, etc. MS 03/19/2014 Fav/CS GO 04/03/2014 Favorable RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 608** Military and Veterans Affairs, Space, and Domestic Security / Hukill (Compare CS/H 731)	Monuments on the Capitol Complex; Establishing the POW-MIA Chair of Honor Memorial; requiring the Florida chapters of Rolling Thunder, Inc., to fund the memorial; requiring the commission to consider recommendations of the Department of Veterans' Affairs and the Florida chapters of Rolling Thunder, Inc., regarding specific aspects of the memorial; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless authorized by general law; revising the powers and duties of the Florida Historical Commission to conform to changes made by the act, etc. MS 03/05/2014 Fav/CS GO 03/26/2014 Favorable RC 04/09/2014 Fav/CS	Fav/CS Yeas 14 Nays 0
12	**CS/SM 368** Governmental Oversight and Accountability / Simpson (Identical CS/HM 261)	Constitutional Convention/Single-Subject Requirement for Federal Legislation; Applying to Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States to provide that every law enacted by Congress shall embrace only one subject, which shall be clearly expressed in its title, etc. JU 02/11/2014 Favorable GO 04/03/2014 Fav/CS RC 04/09/2014 Favorable	Favorable Yeas 13 Nays 1
13	**CS/SB 372** Appropriations / Galvano (Similar H 241)	Developments of Regional Impact; Deleting certain exemptions for dense urban land areas; revising the exemption for any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile; exempting certain developments from certain statewide standards and guidelines, etc. CA 02/04/2014 Favorable ATD 02/19/2014 Fav/CS AP 03/27/2014 Fav/CS RC 04/09/2014 Temporarily Postponed	Temporarily Postponed
14	**SB 1046** Galvano (Similar CS/CS/H 865, Compare CS/H 863, Link CS/S 876)	Public Records/Motor Vehicle Crash Reports; Providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. TR 03/13/2014 Favorable GO 04/03/2014 Favorable RC 04/09/2014 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**CS/CS/SB 808** Governmental Oversight and Accountability / Regulated Industries / Galvano (Similar CS/CS/H 775, Compare CS/H 773, Link CS/S 810)	Public Records/Florida State Boxing Commission; Providing an exemption from public records requirements for the information in the reports required to be submitted to the Florida State Boxing Commission by a promoter or obtained by the commission through audit of a promoter's records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RI 03/13/2014 Fav/CS GO 03/26/2014 Fav/CS RC 04/02/2014 Not Considered RC 04/09/2014 Favorable	Favorable Yeas 13 Nays 1
16	**CS/SB 650** Governmental Oversight and Accountability / Judiciary (Similar H 7101)	OGSR/Inventories of an Estate or Elective Estate; Amending provisions which provide exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed with the clerk of court in an estate proceeding; saving the exemptions from repeal under the Open Government Sunset Review Act, etc. GO 03/13/2014 Fav/CS RC 04/02/2014 Not Considered RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
17	**SB 566** Lee (Identical H 557)	Florida Bright Futures Scholarship Program; Requiring a student, as a prerequisite for the Florida Academic Scholars award, the Florida Medallion Scholars award, or the Florida Gold Seal Vocational Scholars award, to identify a social or civic issue or a professional area of interest and develop a plan for his or her personal involvement in addressing the issue or learning about the area; prohibiting the student from receiving remuneration or academic credit for the volunteer service work performed, etc. ED 03/25/2014 Favorable RC 04/02/2014 Not Considered RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
18	**CS/CS/SB 602** Judiciary / Ethics and Elections / Latvala (Similar H 495, Compare H 571)	Residency of Candidates and Public Officers; Requiring a candidate or public officer required to reside in a specific geographic area to have only one domicile at a time; providing factors that may be considered when determining residency; providing exceptions for active duty military members, etc. EE 03/03/2014 Fav/CS JU 03/18/2014 Not Considered JU 03/25/2014 Fav/CS RC 04/02/2014 Not Considered RC 04/09/2014 Fav/CS	Fav/CS Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**CS/SB 1226** Education / Montford (Similar H 7031, Compare H 367, CS/H 533, H 895, H 4023, H 4025, CS/CS/H 7001, CS/H 7033, CS/H 7083, CS/H 7117, CS/CS/S 850, S 1446, CS/S 1642, S 1708)	Education; Requiring the Auditor General to notify the Legislative Auditing Committee if a district school board fails to take corrective action subsequent to an audit; revising the definition of the term "Next Generation Sunshine State Standards"; revising Department of Education duties relating to the public broadcasting program system; revising course and assessment requirements for the award of a standard high school diploma; revising the effective date of the Adults with Disabilities Workforce Education Pilot Program, etc. ED 03/18/2014 Temporarily Postponed ED 03/25/2014 Fav/CS RC 04/09/2014 Fav/CS	Fav/CS Yeas 14 Nays 0
20	**CS/SB 1396** Education / Montford (Similar CS/H 543, Compare CS/H 541, Link CS/CS/S 900)	Public Records and Meetings/Public-private Partnerships/State Universities; Amending provisions relating to public-private projects for the upgrade of state university facilities and infrastructure; creating an exemption from public records requirements for unsolicited proposals held by a state university board of trustees for a specified period; creating an exemption from public meetings requirements for portions of meetings of a state university board of trustees at which confidential and exempt information is discussed; providing for future review and repeal of the exemptions under the Open Government Sunset Review Act; providing statements of public necessity, etc. ED 03/11/2014 Fav/CS GO 03/26/2014 Favorable RC 04/02/2014 Temporarily Postponed RC 04/09/2014 Fav/CS	Fav/CS Yeas 14 Nays 0
21	**CS/SB 840** Health Policy / Richter (Similar CS/CS/H 711, Compare CS/CS/H 709, Link CS/S 872)	Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board; Providing an exemption from public records requirements for research grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board under the Ed and Ethel Moore Alzheimer's Disease Research Program and records generated by the board relating to the review of the applications; providing an exemption from public meetings requirements for those portions of meetings of the board during which the research grant applications are discussed; requiring the recording of closed portions of meetings; authorizing disclosure of such confidential information under certain circumstances, etc. HP 03/05/2014 Temporarily Postponed HP 03/19/2014 Fav/CS GO 04/03/2014 Favorable RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/CS/SB 1278** Governmental Oversight and Accountability / Banking and Insurance / Richter (Similar CS/CS/H 675, Compare CS/H 673, Link CS/S 1012)	Public Records/Office of Financial Regulation; Providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; providing for future legislative review and repeal of the section; providing a statement of public necessity, etc. BI 03/11/2014 Fav/CS GO 03/26/2014 Fav/CS RC 04/02/2014 Not Considered RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
23	**CS/SB 990** Governmental Oversight and Accountability / Ring (Similar H 1357)	Public Officers and Employees; Removing an exception from prohibited employment or a prohibited contractual relationship for an officer or employee of certain special tax districts or an agency organized pursuant to ch. 298, F.S., etc. GO 03/13/2014 Fav/CS EE 03/24/2014 Favorable RC 04/02/2014 Temporarily Postponed RC 04/09/2014 Temporarily Postponed	Temporarily Postponed
24	**SB 1678** Governmental Oversight and Accountability (Similar H 7143)	OGSR/Agency Personnel Information; Amending provisions which provide an exemption from public records requirements for social security numbers of current and former agency employees held by an employing agency; saving the exemption from repeal under the Open Government Sunset Review Act; authorizing an employing agency to disclose the social security number of a current or former agency employee under certain circumstances, etc. CA 03/25/2014 Favorable RC 04/02/2014 Not Considered RC 04/09/2014 Favorable	Favorable Yeas 14 Nays 0
25	**CS/CS/SB 1308** Judiciary / Banking and Insurance / Simmons (Similar CS/H 1271, Compare H 471, CS/CS/H 565, CS/CS/H 1273, CS/S 1260, Link CS/CS/S 1300)	Insurer Solvency; Providing additional definitions applicable to the Florida Insurance Code; clarifying that production of documents does not waive the attorney-client or work-product privileges; requiring an insurer's annual statement to include an actuarial opinion summary; revising the Standard Valuation Law and the Standard Nonforfeiture Law; providing for the groupwide supervision of international insurance groups, etc. BI 03/11/2014 Fav/CS JU 03/25/2014 Fav/CS RC 04/02/2014 Not Considered RC 04/09/2014 Favorable	Favorable Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	**SB 1698** Banking and Insurance (Similar H 7097)	Ratification of Rules of the Office of Insurance Regulation; Ratifying a specified rule requiring title insurance agencies and the retail offices of certain title insurance underwriters to electronically submit certain statistical data, etc. RC 04/09/2014 Favorable	Favorable Yeas 13 Nays 0
27	**CS/SB 1526** Judiciary / Thrasher (Similar CS/CS/H 7087, Compare CS/H 7085, Link CS/CS/S 1524)	Public Records/Department of Legal Affairs; Creating an exemption from public records requirements for information received by the Department of Legal Affairs pursuant to a notice of a data breach or pursuant to certain investigations; authorizing disclosure under certain circumstances; defining the term “proprietary information”; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 04/01/2014 Fav/CS RC 04/09/2014 Fav/CS	Fav/CS Yeas 13 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:	CS/CS/SB 350
INTRODUCER:	Governmental Oversight and Accountability Committee; Health Policy Committee and Senator Abruzzo
SUBJECT:	Public Records/Yellow Dot Critical Motorist Medical Information Program
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Favorable**
2.	Peterson	Stovall	HP	**Fav/CS**
3.	Kim	McVaney	GO	**Fav/CS**
4.	Everette	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 350, which is tied to CS/SB 262, creates a public records exemption for personal identifying information of a person who participates in a yellow dot critical motorist medical information program. A yellow dot critical motorist medical information program creates a mechanism for providing medical and emergency contact information to emergency medical responders in the event of a motor vehicle accident or medical emergency. Program participants receive a yellow dot to place on their vehicle's rear window, which alerts law enforcement or emergency medical responders to look for a yellow folder in the glove box that contains the medical information.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless saved from repeal 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:

The yellow dot critical motorist medical information program is a means to alert first responders at an accident scene to search for information about the injured person—especially if the person is unable to speak. The program, which began in Connecticut in 2002, has now been adopted in other states, including seven Florida counties.[1]

CS/SB 262 creates specific authorization for counties to implement a program, as follows. After completing an application, the participant will receive a yellow dot decal to place on the vehicle rear window (or clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's information. The form, which is to be placed inside the folder, includes the following information about the participant:

- Name;
- Photograph;
- Emergency contact information of not more than two people;
- Medical information, including medical conditions, recent surgeries, allergies and medications;
- Preferred hospital; and,
- Contact information for not more than two physicians.

The participant's signature on the form authorizes release of the information for the purposes authorized by the bill. These include: to identify the participant; to determine whether the participant has a medical condition that would impede communication; to access the medical information form; and to ensure that information about current medications and conditions may be considered during emergency medical treatment.

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.[2] The records of the legislative, executive, and judicial branches are specifically included.[3]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[4] guarantees every person's right to inspect and

[1] Broward, Miami/Dade, Orange, Osceola, Palm Beach County, Polk, and St. Lucie. My Yellow Dots Program Information Exchange, http://www.myyellowdots.com/florida_yellow_dot.php (last visited Jan. 30, 2014).
[2] FLA CONST. art. I, s. 24(a).
[3] *Id.*
[4] Chapter 119, F.S.

copy any state or local government public record[5] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6]

Only the Legislature may create an exemption to public records requirements.[7] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[8] 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 provisions[9] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[10]

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.[11] 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.[12] 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.

III. Effect of Proposed Changes:

The bill creates a public records exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by a county. CS/CS/SB 350 makes a record kept by a county exempt from public disclosure, not *confidential* and exempt. Exempt records may be disclosed by a records custodian at his or her discretion.[13]

---

[5] 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 "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)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

[6] Section 119.07(1)(a), F.S.

[7] 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 (s*ee 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).

[8] FLA. CONST., art. I, s. 24(c).

[9] The bill may, however, contain multiple exemptions that relate to one subject.

[10] FLA. CONST., art. I, s. 24(c).

[11] 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.).

[12] Section 119.15(3), F.S.

[13] See footnote 7.

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

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states the exemption is necessary to protect a program participant's privacy. In addition, the public necessity statement provides that this exemption is necessary in order to prevent a participant from being the victim of criminal activity.

The bill takes effect on the same date CS/SB 262 or similar legislation authorizing a yellow dot critical motorist medical information program takes effect, if adopted during the 2014 Session. CS/SB 262 takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I 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

Section 24(c), Art. I 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to CS/SB 262,[14] the application form states that information contained in the forms will only be disclosed to authorized law enforcement personnel, public safety and emergency services agencies as well as hospitals. When read together, CS/SB 262 and CS/CS/SB 350 may give a participant the mistaken impression that medical information contained in the forms is exempt from public records. The information recorded on the yellow dot form will be created by and in the possession of the participant and not the county. This means that information in the forms are not public record within the meaning of s. 119.011(12), F.S., and therefore not subject to a public records exemption. CS/CS/SB 350 will only make the information in the hands of the county exempt from public disclosure.

VIII. Statutes Affected:

This bill creates an unnumbered section 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/CS by Governmental Oversight and Accountability on April 3, 2014:
The CS/CS revises the public necessity statement and clarifies that counties will be distributing yellow dot folders. The CS/CS also removes a reference to a participant's medical records being correlated to his or her participation in the yellow dot program.

CS by Health Policy on February 11, 2014:
The CS corrects the Open Government Sunset Review repeal date to October 2, 2019.

B. Amendments:

None.

[14] CS/SB 262 was amended and passed in the Senate on April 3, 2014.

By the Committees on Governmental Oversight and Accountability; and Health Policy; and Senator Abruzzo

585-03732-14 2014350c2

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for personal identifying information of participants in a yellow dot critical motorist medical information program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Public records exemption; participants in a yellow dot critical motorist medical information program.—

(1) Personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by a county participating in such program is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) Subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and is 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 the personal identifying information of a participant in a yellow dot critical motorist medical information program held by a county participating in such program be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Nevertheless,

585-03732-14 2014350c2

allowing the participating counties to distribute yellow dot folders, as well as allowing emergency medical responders and law enforcement agents to access the information provided in yellow dot folders, will ensure the most rapid and effective treatment for victims of serious traffic accidents. If the personal identifying information of a participant in such program were not exempt from disclosure, any person could inspect and copy documentation that identifies the program participant. Consequently, the availability of such information to the public would result in the invasion of the program participant's privacy. Finally, protecting the personal identifying information of a participant in such program prevents the identification of program participants who could be victimized by robbery, burglary, or illicit drug activities. Accordingly, the Legislature finds that the harm to a program participant which could result from the release of personal identifying information of the participant outweighs any minimal public benefit that would be derived from disclosure of that information to the public. Therefore, it is the finding of the Legislature that such identifying information must be made confidential and exempt from public disclosure.

Section 3. This act shall take effect on the same date that SB 262 or similar legislation authorizing the governing body of a county to create a yellow dot critical motorist medical information program takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 9 /2014
Meeting Date

Topic _____ Bill Number 350 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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/CS/SB 976
INTRODUCER:	Judiciary Committee; Health Policy Committee; and Senator Bean
SUBJECT:	Home Health Care
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Looke	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 976 amends s. 400.506, F.S., to clarify that a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide that is referred by a nurse registry is an independent contractor and not an employee of that nurse registry regardless of the regulatory obligation imposed on the nurse registry under ch. 400, F.S.

The bill also clarifies that a nurse registry is not responsible for monitoring, supervising, managing, or training the nurses, companions or homemakers, and home health aides it refers or for reviewing or acting on any records required to be filed with it by ch. 400, F.S., and maintained under the Agency for Health Care Administration (Agency) rule. However, the registry must ensure that a caregiver it refers has credentials demonstrating that the caregiver is adequately trained to perform the task of a home health aide in the home setting. Additionally, a registry must inform patients that the registry is not obligated to monitor, supervise, manage or train the referred caregivers and that the referred caregivers are independent contractors.

The bill requires that if a nurse registry becomes aware of a violation of law, misconduct, or a deficiency in credentials of a nurse, companion or homemaker, or home health aide, then it must advise the patient to terminate the referred person's contract along with a reason for the recommendation, cease referring the contractor to other patients or facilities, and notify the applicable licensing board if practice violations are involved.

The bill does not affect or negate any obligations imposed on a nurse registry under ch. 400, F.S., or ch. 408, F.S., relating to health care administration.

Lastly, the bill exempts home health agencies from a requirement that they be accredited by a recognized organization as a prerequisite to licensure if the agencies are not Medicare or Medicaid certified.

II. Present Situation:

A nurse registry is defined to mean "any person that procures, offers, promises, or attempts to secure health care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under ch. 395, [ch. 400], or ch. 429 or other business entities."[1] Nurse registries operate by referring qualified health care workers to patients, health care facilities, or other business entities who hire such health care workers as independent contractors.[2]

Nurse registries are regulated under the Home Health Services Act found in part III of ch. 400, F.S., specifically s. 400.506, F.S., and part II of ch. 408, F.S., the general licensing provisions for health care facilities regulated by the Agency. A license issued by the Agency is required to operate a nurse registry. As of February 27, 2014, 518 nurse registries were licensed with the Agency.[3,4]

Some of the responsibilities of a nurse registry as established in statute and rule include:

- Referring independent contractors capable of delivering services as defined in a specific medical plan of treatment for a patient or services requested by a client;[5]
- Keeping clinical records received from the independent contractors for 5 years following the termination of that contractor's service;[6]
- Disseminating to the independent contractors the procedures governing the administration of drugs and biologicals to patients required by ch. 464, F.S., and Agency rules, as well as all the information required by 59A-18.005(1), F.A.C.;[7]
- Initially confirming and annually reconfirming the licensure or certification of applicable independent contractors;[8]

[1] Section 400.462(21), F.S.
[2] Agency for Health Care Administration, *2014 Agency Legislative Bill Analysis for SB 976* (February 13, 2014) (on file with the Senate Judiciary Committee).
[3] Multiple nurse registries that are located in the same county may be included in one license and each operational site must be listed on the license.
[4] On-line report of active nurse registries generated from the FloridaHealthFinder.gov website available at: http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx, (Last visited March 19, 2014).
[5] Rule 59A-18.010(2), F.A.C.
[6] Rule 59A-18.012(7), F.A.C.
[7] Rule 59A-18.013(1), F.A.C.
[8] Rule 59A-18.005(3) and (4), F.A.C.

- Annually requesting performance outcome evaluations from the health care facilities where the independent contractor provided services and maintaining those evaluations in that independent contractor's file;[9]
- Establishing a system for recording a following-up on complaints involving independent contractors referred by the nurse registry;[10]
- Informing a health care facility or other business entity that a referred independent contractor is on probation with his or her professional licensing board or certifying agency or has had other restrictions placed on his or her license or certification when the nurse registry has received such information;[11]
- Preparing and maintaining a written comprehensive emergency management plan;[12] and
- Complying with the background screening requirements in s. 400.512, F.S., requiring a level II background check for all employees and contractors.[13]

Because nurse registries operate as referral services with the referred health care workers working as independent contractors for a patient or facility that is responsible for hiring, firing, and paying the referred health care workers, nurse registries are not required to meet the minimum wage and overtime requirements for employers as set out in the federal Fair Labor Standards Act (FLSA). Nonetheless, it is possible for a nurse registry to be considered an employer for the purposes of the FLSA under certain circumstances.[14,15] Currently, even if a nurse registry is found to be an employer, it is still exempt from the requirements of the FLSA relating to minimum wage and overtime due to an exception made for the provision of companionship services.[16] Companionship services have been interpreted to include "essentially all workers providing services in the home to elderly people or people with illnesses, injuries, or disabilities regardless of the skill the duties performed require."[17]

Under a pending change to federal regulation that will take effect on January 1, 2015, the definition of companionship services will be significantly narrowed to specifically exclude "the performance of medically related services."[18] If a nurse registry is found to be an employer after January 1, 2015, it would have to comply with the requirements of the FLSA relating to minimum wage and overtime or be in violation of federal law.

---

[9] Rule 59A-18.017, F.A.C.
[10] *Id.*
[11] *Id.*
[12] 59A-18.018(1), F.A.C.
[13] Section 400.506(9), F.S.
[14] In order to determine whether or not employment or joint employment exists, a person must look at all the facts in a particular case and assess the economic reality of the work relationship. Factors to consider may include whether an employer has the power to direct, control, or supervise the worker(s) or the work performed; whether an employer has the power to hire or fire, modify the employment conditions or determine the pay rates or the methods of wage payment for the worker(s); the degree of permanency and duration of the relationship; where the work is performed and whether the tasks performed require special skills; whether the work performed is an integral part of the overall business operation; whether an employer undertakes responsibilities in relation to the worker(s) which are commonly performed by employers; whose equipment is used; and who performs payroll and similar functions. See *Federal Register, Vol. 78, No. 190*, October 1, 2013, at 60483.
[15] Currently, AHCA rule 59A-18.005(8)(d) requires a nurse registry to record and follow up on complaints that are filed involving individuals it refers. This oversight may meet the supervisory test as stated in note 4.
[16] 29 CFR 552.6.
[17] *Supra* n. 14 at 60455.
[18] *Id.*

III. Effect of Proposed Changes:

The bill clarifies the role of a nurse registry to reduce the likelihood that it would be deemed an employer under the FLSA, as follows:

- A registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract by a nurse registry is an independent contractor and not an employee of that nurse registry regardless of the regulatory obligations imposed on the nurse registry by ch. 400, F.S., and Agency rule.
- A nurse registry is not obligated to monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, or home health aide it refers.
- If a nurse registry becomes aware of a violation of law, misconduct, or a deficiency in the credentials of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide it refers, the registry has the obligation to advise the patient to terminate the referred person's contract and provide a reason to the patient for the recommended termination, cease referring that contractor to other patients or facilities, and notify the appropriate licensing board if practice violations are involved.
- Records required to be filed with the nurse registry by ch. 400, F.S., must be kept in accordance with Agency rules solely as a repository of records and the nurse registry has no obligation to review or act upon such records other than as detailed above.

The bill requires that a nurse registry obtain credentials from each home health aide referred for contract demonstrating that the caregiver is adequately trained to perform the tasks of a home health aide in the home setting. The bill requires a nurse registry to notify patients, in a private residence or facility, upon the referral of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide that the caregiver referred by the nurse registry is an independent contractor and that it is not the obligation of a nurse registry to monitor, supervise, manage, or train a caregiver referred for contract. The bill does not affect or negate any obligations imposed on a nurse registry under ch. 400, F.S., or ch. 408, F.S., relating to health care administration.

Since 2008, home health agencies applying for licensure must be accredited by an accrediting organization that is recognized by the agency as having standards comparable to those required under ch. 400, F.S. and part II of ch. 408, F.S.[19] The bill exempts from accreditation standards home health care agencies that are not Medicare or Medicaid certified. Such home health care agencies typically provide unskilled services to clients in the home setting.

The effective date of the bill is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[19] Chapter 2008-246, s. 3, Laws of Fla. (creating s. 400.471(1)(h), F.S., effective July 1, 2008).

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 substantially amends sections 400.506 and 400.471 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 Judiciary on April 2, 2014:
The committee substitute requires a nurse registry to obtain credentials from each home health aide referred for contract demonstrating that the caregiver is adequately trained to perform the tasks of a home health aide in the home setting. The committee substitute requires a nurse registry to notify patients upon the referral of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide that the caregiver referred by the nurse registry is an independent contractor and that it is not the obligation of a nurse registry to monitor, supervise, manage, or train a caregiver referred for contract. The committee substitute does not affect or negate any obligations imposed on a nurse registry under ch. 400, F.S., or ch. 408, F.S., relating to health care

administration. The committee substitute creates an exemption from accreditation standards for home health care agencies that are not Medicare or Medicaid certified.

CS by Health Policy on March 5, 2014:
The CS amends SB 976 to include companions and homemakers in the clarifications made to a nurse registry's duties. The amendment also adds to the duties of a nurse registry when it becomes aware of illegal activity, misconduct, or a deficiency in credentials of one of its independent contractors by requiring the registry to provide a reason for the suggested termination, to cease referring that contractor, and to notify the licensing board if practice violations are involved.

B. Amendments:

None.

By the Committees on Judiciary; and Health Policy; and Senator Bean

590-03527-14 2014976c2

A bill to be entitled

An act relating to home health care; amending s. 400.471, F.S.; exempting certain home health agencies from specified licensure application requirements; amending s. 400.506, F.S.; requiring a licensed nurse registry to ensure that each certified nursing assistant and home health aide referred by the registry present certain credentials; providing that registered nurses, licensed practical nurses, certified nursing assistants, companions or homemakers, and home health aides are independent contractors and not employees of the nurse registries that referred them; requiring a nurse registry to inform the patient, the patient's family, or a person acting on behalf of the patient that the a referred caregiver is an independent contractor and that the nurse registry is not required to monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred by the nurse registry; providing the duties of the nurse registry for a violation of certain laws by an individual referred by the nurse registry; requiring that certain records be kept in accordance with rules set by the Agency for Health Care Administration; providing that a nurse registry does not have an obligation to review and act upon such records except under certain circumstances; providing an effective date.

590-03527-14 2014976c2

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

Section 1. Paragraph (h) of subsection (2) of section 400.471, Florida Statutes, is amended to read:

400.471 Application for license; fee.—

(2) In addition to the requirements of part II of chapter 408, the initial applicant must file with the application satisfactory proof that the home health agency is in compliance with this part and applicable rules, including:

(h) In the case of an application for initial licensure, documentation of accreditation, or an application for accreditation, from an accrediting organization that is recognized by the agency as having standards comparable to those required by this part and part II of chapter 408. A home health agency that is not Medicare or Medicaid certified and does not provide skilled care is exempt from this paragraph.

Notwithstanding s. 408.806, an applicant that has applied for accreditation must provide proof of accreditation that is not conditional or provisional within 120 days after the date of the agency's receipt of the application for licensure or the application shall be withdrawn from further consideration. Such accreditation must be maintained by the home health agency to maintain licensure. The agency shall accept, in lieu of its own periodic licensure survey, the submission of the survey of an accrediting organization that is recognized by the agency if the accreditation of the licensed home health agency is not provisional and if the licensed home health agency authorizes

releases of, and the agency receives the report of, the accrediting organization.

Section 2. Paragraph (a) of subsection (6) of section 400.506, Florida Statutes, is amended, and paragraphs (d) and (e) are added to that subsection, and subsections (19) and (20) are added to that section, to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(6)(a) A nurse registry may refer for contract in private residences registered nurses and licensed practical nurses registered and licensed under part I of chapter 464, certified nursing assistants certified under part II of chapter 464, home health aides who present documented proof of successful completion of the training required by rule of the agency, and companions or homemakers for the purposes of providing those services authorized under s. 400.509(1). A licensed nurse registry shall ensure that each certified nursing assistant referred for contract by the nurse registry and each home health aide referred for contract by the nurse registry has presented credentials demonstrating that he or she is adequately trained to perform the tasks of a home health aide in the home setting. Each person referred by a nurse registry must provide current documentation that he or she is free from communicable diseases.

(d) A registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter by a nurse registry shall be deemed an independent contractor and not an employee of the nurse registry regardless of the obligations imposed on a nurse registry under this chapter or chapter 408.

(e) Upon referral of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide for contract in a private residence or facility, the nurse registry shall advise the patient or the patient's family, or any other person acting on behalf of the patient that at the time of the contract for services that the caregiver referred by the nurse registry is an independent contractor and that it is not the obligation of a nurse registry to monitor, supervise, manage, or train a caregiver referred for contract under this chapter.

(19) It is not the obligation of a nurse registry to monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter. In the event of a violation of this chapter or a violation of any other law of this state by a referred registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry shall advise the patient to terminate the referred person's contract, providing the reason for the suggested termination; cease referring the individual to other patients or facilities; and, if practice violations are involved, notify the licensing board. This section does not affect or negate any other obligations imposed on a nurse registry under chapter 408.

(20) Records required under this chapter to be filed with the nurse registry as a repository of records must be kept in accordance with rules adopted by the agency, and the nurse

registry has no obligation to review and act upon such records except as specified in subsection (19).

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)

4/9/2014
Meeting Date

Topic _____ Bill Number 976 *(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:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 4, 2014

Senator John Thrasher
Chairman, Committee on Rules
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

This letter is to request that *CS/CS/SB 976 relating to an act of Nurse Registries* be placed on the agenda for the next possible committee meeting if received.

Thank you for your consideration of this request.

Respectfully,

Aaron Bean

Aaron Bean
State Senator, 4th District

CC: John Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:
☐ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

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 Rules

BILL:	CS/SB 862
INTRODUCER:	Judiciary Committee and Health Policy Committee
SUBJECT:	Prescription Drug Monitoring
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Looke	Stovall		**HP SPB 7016 as introduced**
1.	Munroe	Cibula	JU	**Fav/CS**
2.	Looke	Phelps	RC	**Favorable**

I. Summary:

CS/SB 862 amends section 893.055, F.S., relating to the prescription drug monitoring program to improve clarity by reorganizing text, rephrasing imprecise language, and deleting outdated or redundant language.

The bill also makes several substantive changes to:

- Require the Department of Health to adopt a user agreement rule that requires users to maintain procedures to protect the confidentiality of information from the prescription drug monitoring program's database;
- Require a law enforcement agency to execute the user agreement before information from the prescription drug monitoring program is released to the agency;
- Allow the Department of Health (DOH or department) to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists;
- Provide requirements for the release of information from the prescription drug monitoring program's database shared with a state attorney in response to a discovery demand;
- Authorize a law enforcement agency to use information from the prescription drug program database to determine whether an active investigation is warranted;
- Allow DOH to provide a patient advisory report to the appropriate health care practitioner if the manager of the prescription drug monitoring program determines that a specified pattern exists;
- Define the term "dispense" or "dispensing" using existing language in the statute and in the definitions section of chapter 893, F.S.;
- Allow an impaired practitioner consultant retained by the DOH access to information in the prescription drug monitoring program's database which relates to a practitioner who has agreed to be evaluated or monitored by the consultant.

- Fund, subject to the General Appropriations Act, the prescription drug monitoring program with up to $500,000 annually from excess collections related to the practice of pharmacy; and
- Eliminate the direct support organization for the prescription drug monitoring program.

II. Present Situation:

Florida's Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.[1] Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.[2]

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.[3] Dispensers have reported over 87 million controlled substance prescriptions to the PDMP since its inception.[4] Health care practitioners began accessing the PDMP on October 17, 2011.[5] Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.[6]

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information[7] of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.[8]

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.[9] Currently, prescribers are not required to consult the PDMP

---

[1] Section 893.055(2)(a), F.S.
[2] Section 893.055(3)(a)-(c), F.S.
[3] Florida Health, *2012-2013 Prescription Drug Monitoring Program Annual Report*, available at http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf, last visited on March 19, 2014.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.
[8] Section 893.0551(2)(a)-(h), F.S.
[9] Section 893.055(7)(b), F.S.

database before prescribing a controlled substance for a patient however physicians and pharmacists queried the database more than 3.7 million times during fiscal year 2012-2013.[10]

Indirect access to the PDMP database is provided to:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations[11] involving potential criminal activity, fraud, or theft regarding prescribed controlled substances; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.[12]

Law enforcement agencies may receive information from the PDMP database through the procedures outlined in the DOH's "Training Guide for Law Enforcement and Investigative Agencies."[13] Agencies that wish to gain access to the PDMP database must first appoint a sworn law enforcement officer as an administrator who verifies and credentials other law enforcement officers within the same agency.[14] The administrator may then register individual law enforcement officers with the DOH.

Registered law enforcement officers may not directly access the PDMP, instead when they wish to obtain information from the PDMP database, they must submit a query to the DOH.[15] These queries may be for a patient's history, a prescriber's history, or a pharmacy's dispensing history.[16] The registered law enforcement officer must fill out a form indicating what type of search they want to perform, what parameters (name, date, time period, etc.) they want to include, and some details of the active investigation they are pursuing including a case number. This form is submitted to the DOH and, in most instances, the requested information is made available to the requesting officer. In some cases, a request is denied. Generally, a request is denied due to lack of sufficient identifying information (incorrect spelling of a name, wrong social security number, etc.) or, alternatively, a request may return no results. The DOH may also deny a request that it finds not to be authentic or authorized.[17]

---

[10] *Supra* at n. 3

[11] Section 893.055(1)(h), F.S., defines an "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

[12] Section 893.055(7)(c)1.-4., F.S.

[13] This training guide may be found at http://www.hidinc.com/assets/files/flpdms/FL%20PDMP_Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf, last viewed on March 19, 2014.

[14] See the DOH's "Law enforcement administrator appointment form," available at http://www.floridahealth.gov/reports-and-data/e-forcse/law-enforcement-information/_documents/admin-appoint-form.pdf, last visited on March 19, 2014.

[15] During FY 2012-2013 a total of 487 authorized law enforcement users queried the PDMP database 32,839 times. Id. at note 3.

[16] *Id.* at note 11.

[17] Section 893.055(7)(c), F.S., requires the DOH to verify a request as being "authentic and authorized" before releasing information from the PDMP.

Funding the PDMP

Restrictions on how the DOH may fund implementation and operation of the PDMP are also included in statute. The DOH is prohibited from using state funds and any money received directly or indirectly from prescription drug manufacturers to implement the PDMP.[18] Funding for the PDMP comes from three funding sources:[19]

- Donations procured by the Florida PDMP Foundation, Inc.;
- Federal grants; and
- Private grants and donations.

The Legislature appropriated $500,000 of the DOH's general revenue funds during the 2013 session to fund the PDMP for fiscal year 2013-2014.[20]

PDMP Direct-Support Organization

The Florida PDMP Foundation, Inc., (Foundation) is the direct-support organization authorized under the prescription drug monitoring program in s. 893.055, F.S. The Foundation is a not-for-profit Florida corporation that operates under contract with the department to acquire funding to support the PDMP. The Foundation transfers money to the department for the development, implementation, and ongoing operation of the PDMP.

Current law provides for the reversion, without penalty, to the state of all money and property held in trust by the Foundation for the benefit of the PDMP if the Foundation ceases to exist or if the contract is terminated.[21]

Prescription Drug Monitoring Programs in Other States

As of December 2013, every state except Missouri has passed PDMP legislation and only New Hampshire and Washington, D.C., have yet to bring their PDMP to operation status.[22] The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.[23] All PDMPs examined are either run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the PDMP and primarily encourage prescribers to use the database through education and outreach programs.[24] Only three of the 26 states require prescribers to access the database before prescribing most or all controlled substances.[25] In 17 of

[18] Section 893.055(10) and (11)(c), F.S.
[19] Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE) webpage, available at http://www.floridahealth.gov/reports-and-data/e-forcse/funding/index.html, last visited on March 19, 2014.
[20] Chapter 2013-153, Laws of Fla.
[21] *See* s. 893.055(11)(d)4., F.S.
[22] National Alliance for Model State Drug Laws. *Compilation of State Prescription Monitoring Programs Maps*, can be found at http://www.namsdl.org/library/ last visited on March 19, 2014.
[23] *OPPAGA Review of State Prescription Drug Monitoring Programs*, January 31, 2013, on file with the Senate Health Policy Committee.
[24] *Id.* at 8.
[25] Kentucky, New Mexico, and New York. *Id.* at 4.

23 states, including Florida, accessing the database is strictly voluntary, and in the remaining six states accessing the database is only required under limited circumstances.[26]

All states reviewed have the authority to take punitive action against dispensers of prescription drugs which do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, or criminal charges. However, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

As of December 5, 2013, 18 states require law enforcement agencies to obtain a search warrant, subpoena, court order, or other type of judicial process in order to access the information in their state's PDMP.[27]

Unauthorized Release of PDMP Data

In the early summer of 2013, the PDMP information of approximately 3,300 individuals was improperly shared with a person or persons who were not authorized to obtain such information.[28] The original information was released from the PDMP by the DOH during a Drug Enforcement Administration (DEA) investigation of a ring of individuals who used four doctor's information to conduct prescription fraud. Although as a result of the investigation only six individuals were ultimately charged, the information of approximately 3,300 individuals was released to the DEA because the DEA searched the PDMP for the records of all the patients of the four doctors who had been the victims of the prescription drug fraud.[29] During the conduct of the investigation and the resulting prosecution, the DEA shared the full file with the prosecutor who, in turn, shared the full file with the defense attorney during discovery. The improper release of information occurred when a defense attorney associated with the case shared the file with a colleague who was not associated with the case.[30]

Reasonable Suspicion v. Probable Cause

The terms reasonable suspicion and probable cause are legal terms of art that refer to the level of proof that be proffered before a certain action, generally a police action, may be taken. Reasonable suspicion is the lesser standard which is applied to actions such as Terry stops[31] and to searches in areas where there is a lesser expectation of privacy, such as in a school.[32] Probable

[26] These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if there is a reasonable suspicion that the patient it abusing drugs, or if the prescription was written in a pain clinic. Id.
[27] These states are: Alaska, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, and Wisconsin. See the National Alliance for Model State Drug Laws, *Law Enforcement Access to State PMP Data*, available at http://www.namsdl.org/library/ , last visited on March 19, 2014.
[28] See John Woodrow Cox, *Did Florida's prescription pill database really spring a leak?*, Tampa Bay Times, July 5, 2013. Available at http://www.tampabay.com/news/politics/did-floridas-prescription-pill-database-really-spring-a-leak/2130108, last visited on March 19, 2014, and see the DOH presentation to the Senate Health Policy Committee on the PDMP, September 24, 2013, on file with Health Policy Committee staff.
[29] *Id.*
[30] *Id.*
[31] *Terry v. Ohio*, 392 U.S. 1 (1968).
[32] *See R.M. v. State*, 129 So. 3d 1157 (Fla. 3d DCA 2014).

cause is the greater of the two standards and is the one the police must meet when arresting a suspect.[33]

In order to meet the standard for reasonable suspicion, a police officer must be able to show a "well-founded, articulable suspicion of criminal activity."[34] In contrast, in order to meet the standard for probable cause, an officer must be able to show that the "facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."[35] The key difference between the standards lies in the knowledge of the officer. With reasonable suspicion, the officer must only suspect that a crime has been committed, while with probable cause, the officer must have enough evidence to convince a "prudent man" that a crime has been committed.

III. Effect of Proposed Changes:

The bill amends s. 893.055, F.S., to significantly, but technically, revise the section by reorganizing and grouping related items, clarifying imprecise language, and deleting outdated or redundant language.

The bill also makes several substantive changes to:

- Require the Department of Health to adopt a user agreement rule that requires users to protect the confidentiality of information from the prescription drug monitoring program's database;
- Require a law enforcement agency to execute the user agreement before information from the prescription drug monitoring program is released to the agency;
- Allow the Department of Health (DOH or department) to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists;
- Provide requirements for the release of information from the prescription drug monitoring program's database shared with a state attorney in response to a discovery demand;
- Authorize a law enforcement agency to use information from DOH to determine whether an active investigation is warranted;
- Allow DOH to provide a patient advisory report to the appropriate health care practitioner if the manager of the prescription drug monitoring program determines that a specified pattern exists;
- Define the term "dispense" or "dispensing" using existing language in the statute and in the definitions section of ch. 893, F.S.;
- Allow an impaired practitioner consultant retained by the DOH access to information in the prescription drug monitoring program's database which relates to a practitioner who has agreed to be evaluated or monitored by the consultant;
- Fund, subject to the General Appropriations Act, the prescription drug monitoring program with up to $500,000 annually from excess collections related to the practice of pharmacy; and
- Eliminate the direct support organization for the prescription drug monitoring program.

[33] *Popple v. State*, 626 So. 2d 185, 186-187 (Fla. 1993).
[34] Id.
[35] *Henry v. U.S.*, 361 U.S. 98, 102 (1959) (internal citations omitted).

Additionally, the bill imposes minimum requirements for the user agreement. The agreement must:

- Provide for access control and information security in order to ensure the confidentiality of information
- Require training;
- Require each agency head to submit an annual attestation to the program manager of the prescription drug monitoring program that the user agreement is being complied with and to disclose any findings and actions taken to maintain compliance;
- Require each agency that receives information from the database to electronically update the database semiannually with the status of the case for which the information was requested, in accordance with procedures established by department rule;
- Require each agency head to appoint one agency administrator to be responsible for appointing authorized users to request and receive investigative reports on behalf of the agency to ensure the agency maintains compliance with the user agreement and laws governing access, use, and dissemination of information received;
- Require each authorized user to attest that each request for confidential information from the database is predicated on and related to an active investigation;
- Require the agency to conduct annual audits of the administrator and of each user to ensure the user agreement is followed; and
- Allow the program manager of the prescription drug monitoring program to restrict, suspend, or terminate an administrator's or authorized user's access to information in the database if the department finds the administrator or user has failed to comply with the user agreement.

The bill takes effect 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:

None.

C. Government Sector Impact:

Law enforcement agencies may incur a cost associated with obtaining a court order prior to accessing information in the PDMP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.055 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 Judiciary Committee on April 1, 2014:
The committee substitute deletes the obligation for law enforcement agencies seeking information from the prescription drug monitoring program's database to obtain a court order based upon a showing of reasonable suspicion of potential criminal activity. In lieu of that requirement, law enforcement agencies must execute user agreements with the Department of Health to ensure access, security, and confidentiality of information released from the prescription drug monitoring program's database. The Department of Health must establish a user agreement by rule that follows the guidelines established in the committee substitute. The committee substitute allows an impaired practitioner consultant retained by the Department of Health access to information in the prescription drug monitoring program's database which relates to a practitioner who has agreed to be evaluated or monitored by the consultant.

B. Amendments:

None.

By the Committees on Judiciary; and Health Policy

590-03524-14 2014862c1

A bill to be entitled

An act relating to prescription drug monitoring; amending s. 893.055, F.S.; defining and redefining terms; revising provisions relating to the comprehensive electronic database system and prescription drug monitoring program maintained by the Department of Health; allowing impaired practitioner consultants retained by the department access to certain information; providing requirements for the release of information shared with a state attorney in response to a discovery demand; providing procedures for the release of information to a law enforcement agency during an active investigation; requiring the department to adopt a user agreement by rule; requiring the department to enter into a user agreement with the law enforcement agency requesting the release of information; providing requirements for the user agreement; requiring a law enforcement agency under a user agreement to conduct annual audits; providing for the restriction, suspension, or termination of a user agreement; providing for access to the program database by the program manager and designated support staff; authorizing the department to provide a patient advisory report to the appropriate health care practitioner if the program manager determines that a specified pattern exists; authorizing the department to provide relevant information that does not contain personal identifying information to a law enforcement agency if the program

590-03524-14 2014862c1

manager determines that a specified pattern exists; authorizing the law enforcement agency to use such information to determine whether an active investigation is warranted; authorizing the department to fund the program with up to $500,000 of funds generated under ch. 465, F.S.; authorizing the department to seek federal or private funds to support the program; repealing language creating a direct-support organization to fund the program; deleting obsolete provisions; providing an effective date.

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

Section 1. Section 893.055, Florida Statutes, is amended to read:

893.055 Prescription drug monitoring program.—

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

(a) "Patient advisory report" or "advisory report" means information provided by the department ~~in writing, or as determined by the department,~~ to a prescriber, dispenser, pharmacy, or patient concerning the dispensing of controlled substances. ~~All~~ Advisory reports are for informational purposes only and do not impose any obligation ~~no obligations of any nature~~ or ~~any~~ legal duty on a prescriber, dispenser, pharmacy, or patient. An advisory report ~~The patient advisory report shall be provided in accordance with s. 893.13(7)(a)8. The advisory reports~~ issued by the department is ~~are~~ not subject to discovery or introduction into evidence in a ~~any~~ civil or administrative action against a prescriber, dispenser, pharmacy, or patient

arising out of matters that are the subject of the report. A department employee~~; and a person~~ who participates in preparing, reviewing, issuing, or any other activity related to an advisory report is ~~may~~ not allowed ~~be permitted~~ or required to testify in any such civil action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with preparing, reviewing, or issuing such a report.

(b) "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in s. 893.03.

(c) "Dispenser" means a pharmacy, dispensing pharmacist, or dispensing health care practitioner, and includes a pharmacy, dispensing pharmacist, or health care practitioner that is not located in this state but is otherwise subject to the jurisdiction of this state as to a particular dispensing transaction.

(d) "Health care practitioner" or "practitioner" means a ~~any~~ practitioner who is subject to licensure or regulation by the department under chapter 458, chapter 459, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466.

(e) "Health care regulatory board" means a ~~any~~ board for a practitioner or health care practitioner who is licensed or regulated by the department.

(f) "Pharmacy" means a ~~any~~ pharmacy that is subject to licensure or regulation by the department under chapter 465 and that dispenses or delivers a controlled substance to an individual or address in this state.

(g) "Prescriber" means a prescribing physician, prescribing

practitioner, or other prescribing health care practitioner.

(h) "Active investigation" means an investigation that is being conducted with a reasonable, good faith belief that it will ~~could~~ lead to the filing of administrative, civil, or criminal proceedings~~,~~ or an investigation that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

(i) "Law enforcement agency" means the Department of Law Enforcement, a Florida sheriff's department, a Florida police department, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and whose ~~which its~~ agents and officers are empowered by law to conduct criminal investigations and make arrests.

(j) "Program manager" means an employee of or a person contracted by the Department of Health who is designated to ensure the integrity of the prescription drug monitoring program in accordance with the requirements established in paragraphs (2)(a) and (b).

(k) "Dispense" or "dispensing" means the transfer of possession of one or more doses of a medicinal drug by a health care practitioner to the ultimate consumer or to the ultimate consumer's agent, including, but not limited to, a transaction with a dispenser pursuant to chapter 465 and a dispensing transaction to an individual or address in this state with a dispenser that is located outside this state but is otherwise subject to the jurisdiction of this state as to that dispensing transaction.

(2)(a) The department shall maintain ~~design and establish~~ a comprehensive electronic database system in order to collect and store specified information from dispensed ~~that has~~ controlled substance prescriptions and shall release information to authorized recipients in accordance with subsection (6) and s. 893.0551 ~~provided to it and that provides prescription information to a patient's health care practitioner and pharmacist who inform the department that they wish the patient advisory report provided to them~~. ~~Otherwise, the patient advisory report will not be sent to the practitioner, pharmacy, or pharmacist.~~ The system must ~~shall be designed to provide information regarding dispensed prescriptions of controlled substances and shall~~ not infringe upon the legitimate prescribing or dispensing of a controlled substance by a prescriber or dispenser acting in good faith and in the course of professional practice and must~~. The system shall~~ be consistent with standards of the American Society for Automation in Pharmacy (ASAP). The ~~electronic~~ system must ~~shall~~ also comply with the Health Insurance Portability and Accountability Act (HIPAA) as it pertains to protected health information (PHI), electronic protected health information (EPHI), and ~~all~~ other relevant state and federal privacy and security laws and regulations. ~~The department shall establish policies and procedures as appropriate regarding the reporting, accessing the database, evaluation, management, development, implementation, operation, storage, and security of information within the system. The reporting of prescribed controlled substances shall include a dispensing transaction with a dispenser pursuant to chapter 465 or through a dispensing transaction to an individual~~

~~or address in this state with a pharmacy that is not located in this state but that is otherwise subject to the jurisdiction of this state as to that dispensing transaction. The reporting of patient advisory reports refers only to reports to patients, pharmacies, and practitioners. Separate reports that contain patient prescription history information and that are not patient advisory reports are provided to persons and entities as authorized in paragraphs (7)(b) and (c) and s. 893.0551.~~

(b) The department shall maintain the electronic system so that a patient's health care practitioner or pharmacist is able to receive a patient advisory report upon request~~, when the direct support organization receives at least $20,000 in nonstate moneys or the state receives at least $20,000 in federal grants for the prescription drug monitoring program, shall adopt rules as necessary concerning the reporting, accessing the database, evaluation, management, development, implementation, operation, security, and storage of information within the system, including rules for when patient advisory reports are provided to pharmacies and prescribers. The patient advisory report shall be provided in accordance with s. 893.13(7)(a)8. The department shall work with the professional health care licensure boards, such as the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy; other appropriate organizations, such as the Florida Pharmacy Association, the Florida Medical Association, the Florida Retail Federation, and the Florida Osteopathic Medical Association, including those relating to pain management; and the Attorney General, the Department of Law Enforcement, and the Agency for Health Care Administration to develop rules appropriate for the~~

~~prescription drug monitoring program.~~

(c) The department shall:

1. Establish policies and procedures and adopt rules necessary to provide for access to and evaluation, management, and operation of the electronic system.

2. Establish policies and procedures and adopt rules necessary to provide for the reporting, storage, and security of information within the electronic system, including:

a. Any additional information, other than the information listed in subsection (3), which must be reported to the system.

b. The process by which dispensers must provide the required information concerning each controlled substance that it has dispensed in a secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.

c. The process by which the department may approve an extended period of time for a dispenser to report a dispensed prescription to the system.

d. Procedures providing for reporting during a state-declared or nationally declared disaster.

e. Procedures for determining when a patient advisory report is required to be provided to a pharmacy or prescriber.

f. Procedures for determining whether a request for information under paragraph (6)(b) is authentic and authorized by the requesting agency.

3. Cooperate with professional health care licensure boards, such as the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy; other appropriate organizations, such as the Florida Pharmacy Association, the

Florida Medical Association, the Florida Retail Federation, the Florida Osteopathic Medical Association, and those relating to pain management; and the Attorney General, the Department of Law Enforcement, and the Agency for Health Care Administration to develop rules appropriate for the prescription drug monitoring program ~~All dispensers and prescribers subject to these reporting requirements shall be notified by the department of the implementation date for such reporting requirements~~.

4.~~(d)~~ Cooperate ~~The program manager shall work~~ with professional health care licensure boards and the stakeholders listed in subparagraph 3. ~~paragraph (b)~~ to develop rules appropriate for identifying indicators of controlled substance abuse.

(3) The dispenser of ~~The pharmacy dispensing the controlled substance and each prescriber who directly dispenses~~ a controlled substance shall submit to the electronic system, by a procedure and in a format established by the department and consistent with an ASAP-approved format, the following information for each prescription dispensed ~~inclusion in the database~~:

(a) The name of the prescribing practitioner, the practitioner's federal Drug Enforcement Administration registration number, the practitioner's National Provider Identification (NPI) or other appropriate identifier, and the date of the prescription.

(b) The date the prescription was filled and the method of payment, such as cash by an individual, insurance coverage through a third party, or Medicaid payment. This paragraph does not authorize the department to include individual credit card

numbers or other account numbers in the database.

(c) The full name, address, and date of birth of the person for whom the prescription was written.

(d) The name, national drug code, quantity, and strength of the controlled substance dispensed.

(e) The full name, federal Drug Enforcement Administration registration number, and address of the pharmacy or other location from which the controlled substance was dispensed. If the controlled substance was dispensed by a practitioner other than a pharmacist, the practitioner's full name, federal Drug Enforcement Administration registration number, and address.

(f) The name of the pharmacy or practitioner, other than a pharmacist, dispensing the controlled substance and the practitioner's National Provider Identification (NPI).

(g) Other appropriate identifying information as determined by department rule.

(4) Each time a controlled substance is dispensed to an individual, the information specified in subsection (3) ~~controlled substance~~ shall be reported by the dispenser to the department through the system using a department-approved process as soon thereafter as possible, but not more than 7 days after the date the controlled substance is dispensed unless an extension is approved by the department. Costs to the dispenser for submitting the information required by this section may not be material or extraordinary. Costs not considered to be material or extraordinary include, but are not limited to, regular postage, electronic media, regular electronic mail, and facsimile charges. A person who willfully and knowingly fails to report the dispensing of a controlled substance as required by

this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 ~~for cause as determined by rule~~. ~~A dispenser must meet the reporting requirements of this section by providing the required information concerning each controlled substance that it dispensed in a department-approved, secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.~~

(5) ~~When the following acts of dispensing or administering occur,~~ The following acts are exempt from the reporting ~~under~~ requirements of this section ~~for that specific act of dispensing or administration~~:

(a) The administration of ~~A health care practitioner when administering~~ a controlled substance directly to a patient by a health care practitioner if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(b) The administration of ~~A pharmacist or health care practitioner when administering~~ a controlled substance by a health care practitioner to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

(c) The administration or dispensing of ~~A practitioner when administering or dispensing~~ a controlled substance by a health care practitioner within ~~in~~ the health care system of the Department of Corrections.

(d) The administration of ~~A practitioner when administering~~

a controlled substance by a health care practitioner in the emergency room of a licensed hospital.

(e) The administration or dispensing of ~~A health care practitioner when administering or dispensing~~ a controlled substance by a health care practitioner to a person under the age of 16.

(f) The ~~A pharmacist or a dispensing practitioner when~~ dispensing of a one-time, 72-hour emergency resupply of a controlled substance by a dispenser to a patient.

(6) Confidential and exempt information in the prescription drug monitoring program's database may be released only as provided in this subsection and s. 893.0551 ~~The department may establish when to suspend and when to resume reporting information during a state-declared or nationally declared disaster~~.

~~(7)(a) A practitioner or pharmacist who dispenses a controlled substance must submit the information required by this section in an electronic or other method in an ASAP format approved by rule of the department unless otherwise provided in this section. The cost to the dispenser in submitting the information required by this section may not be material or extraordinary. Costs not considered to be material or extraordinary include, but are not limited to, regular postage, electronic media, regular electronic mail, and facsimile charges.~~

(a) ~~(b)~~ A pharmacy, prescriber, or dispenser shall have access to information in the prescription drug monitoring program's database which relates to a patient of that pharmacy, prescriber, or dispenser in a manner established by the

department as needed for the purpose of reviewing the patient's controlled substance prescription history. A prescriber or dispenser acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information from the prescription drug monitoring program. This subsection does not create a private cause of action, and a person may not recover damages against a prescriber or dispenser authorized to access information under this subsection for accessing or failing to access such information ~~Other access to the program's database shall be limited to the program's manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or such designated staff is for prescription drug program management only or for management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. Confidential and exempt information in the database shall be released only as provided in paragraph (c) and s. 893.0551. The program manager, designated program and support staff who act at the direction of or in the absence of the program manager, and any individual who has similar access regarding the management of the database from the prescription drug monitoring program shall submit fingerprints to the department for background screening. The department shall follow the procedure established by the Department of Law Enforcement to request a statewide criminal history record check and to request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of~~

~~Investigation for a national criminal history record check.~~

(b)~~(c)~~ The following entities are ~~shall~~ not ~~be~~ allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that is confidential and exempt under s. 893.0551. Before ~~Prior to~~ release, the request by the following entities shall be verified as authentic and authorized with the requesting organization by the program manager or~~,~~ the program manager's program and support staff~~, or as determined in rules by the department as being authentic and as having been authorized by the requesting entity~~:

1. The department or its relevant health care regulatory boards responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances and who are involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.

2. The Attorney General for Medicaid fraud cases involving prescribed controlled substances.

3. A law enforcement agency during active investigations of ~~regarding~~ potential criminal activity, fraud, or theft regarding prescribed controlled substances, in accordance with paragraph (d).

4. A patient or the legal guardian or designated health care surrogate of an incapacitated patient as described in s. 893.0551 who, for the purpose of verifying the accuracy of the database information, submits a written and notarized request

that includes the patient's full name, address, and date of birth~~, and includes the same information if the legal guardian or health care surrogate submits the request~~. If the patient's legal guardian or health care surrogate is the requestor, the request shall be validated by the department to verify the identity of the patient and the legal guardian or health care surrogate~~, if the patient's legal guardian or health care surrogate is the requestor~~. Such verification is also required for any request to change a patient's prescription history or other information related to his or her information in the electronic database.

5. An impaired practitioner consultant who is retained by the department under s. 456.076 shall have access to information in the prescription drug monitoring program's database, in a manner established by the department, which relates to a practitioner who has agreed to be evaluated or monitored by the consultant, as needed for the purpose of reviewing the practitioner's controlled substance prescription history.

(c) Information in or released from the prescription drug monitoring program database ~~for the electronic prescription drug monitoring system~~ is not discoverable or admissible in any civil or administrative action~~,~~ except in an investigation and disciplinary proceeding by the department or the appropriate regulatory board. Information shared with a state attorney pursuant to s. 893.0551(3)(a) or (c) may be released only in response to a discovery demand if such information is directly related to the criminal case for which the information was requested. If additional information is shared with the state attorney which is not directly related to the criminal case, the

state attorney shall inform the inquirer that such information exists. Unrelated information may not be released except upon an order of a court of competent jurisdiction.

(d) The department shall adopt a user agreement by rule. Before releasing any information pursuant to subparagraph (b)3., the department shall enter into a user agreement with the law enforcement agency requesting information from the prescription drug monitoring database. At a minimum, the user agreement must:

1. Provide for access control and information security in order to ensure the confidentiality of the information.

2. Contain training requirements.

3. Require each agency head to submit an annual attestation to the program manager that the user agreement is being complied with and to disclose any findings and actions taken to maintain compliance. Any findings of noncompliance must be reported immediately by the agency head to the program manager.

4. Require each agency that receives information from the database to electronically update the database semiannually with the status of the case for which the information was requested, in accordance with procedures established by department rule.

5. Require each agency head to appoint one agency administrator to be responsible for appointing authorized users to request and receive investigative reports on behalf of the agency to ensure the agency maintains compliance with the user agreement and laws governing access, use, and dissemination of information received.

6. Require each authorized user to attest that each request for confidential information from the database is predicated on and related to an active investigation.

7. Require the agency to conduct annual audits of the administrator and of each authorized user to ensure the user agreement is being followed. Such audits must be conducted by an internal affairs, professional compliance, inspector general, or similarly situated unit within the agency which normally handles inspections or internal investigations for that agency. The review must include any allegations of noncompliance, potential security violations, and a report on the user's compliance with laws, rules, and the user agreement. The agency shall also conduct routine audits on access and dissemination of records. The results of each audit shall be submitted to the program manager within 7 days after completing the audit. By October 1, 2014, the department shall adopt rules to ensure that each agency is complying with the audit requirements pursuant to this subparagraph.

8. Allow the program manager to restrict, suspend, or terminate an administrator's or authorized user's access to information in the database if the department finds that the administrator or authorized user has failed to comply with the terms of the user agreement. If an agency does not comply with the department's rules on audit requirements, the program manager shall suspend the agency's access to information in the database until the agency comes into compliance with such rules.

(e) ~~(d)~~ Other than the program manager and his or her program or support staff as authorized in paragraph (f), department staff are~~, for the purpose of calculating performance measures pursuant to subsection (8), shall~~ not ~~be~~ allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and,

when authorized by the program manager, the program manager's program and support staff, information that does not contain ~~contains no~~ identifying information of any patient, physician, health care practitioner, prescriber, or dispenser and that is not confidential and exempt for the purpose of calculating performance measures pursuant to subsection (7).

(f) The program manager and designated support staff, upon the direction of the program manager or as otherwise authorized during the program manager's absence, may access the prescription drug monitoring program database only to manage the program or to manage the program database and systems in support of the requirements of this section or as established by the department in rule pursuant to subparagraph (2)(c)4. The program manager, designated program and support staff who act at the direction of or in the absence of the program manager, and any individual who has similar access regarding the management of the database from the prescription drug monitoring program shall submit fingerprints to the department for background screening. The department shall follow the procedure established by the Department of Law Enforcement to request a statewide criminal history record check and to request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(g) If the program manager determines a pattern consistent with the rules established under subparagraph (2)(c)4., the department may provide:

1. A patient advisory report to an appropriate health care practitioner; and

2. Relevant information that does not contain personal

identifying information to the applicable law enforcement agency. A law enforcement agency may use such information to determine whether an active investigation is warranted.

(h) ~~(c)~~ All transmissions of data required by this section must comply with relevant state and federal privacy and security laws and regulations. However, an ~~any~~ authorized agency or person under s. 893.0551 receiving such information as allowed by s. 893.0551 may maintain the information received for up to 24 months before purging it from his or her records or maintain it for longer than 24 months if the information is pertinent to ongoing health care or an active law enforcement investigation or prosecution.

~~(f) The program manager, upon determining a pattern consistent with the rules established under paragraph (2)(d) and having cause to believe a violation of s. 893.13(7)(a)8., (8)(a), or (8)(b) has occurred, may provide relevant information to the applicable law enforcement agency.~~

(7) ~~(8)~~ To assist in fulfilling program responsibilities, performance measures shall be reported annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives by the department each December 1~~, beginning in 2011~~. Data that does not contain patient, physician, health care practitioner, prescriber, or dispenser identifying information may be requested during the year by department employees so that the department may undertake public health care and safety initiatives that take advantage of observed trends. Performance measures may include, but are not limited to, efforts to achieve the following outcomes:

(a) Reduction of the rate of inappropriate use of

prescription drugs through department education and safety efforts.

(b) Reduction of the quantity of pharmaceutical controlled substances obtained by individuals attempting to engage in fraud and deceit.

(c) Increased coordination among partners participating in the prescription drug monitoring program.

(d) Involvement of stakeholders in achieving improved patient health care and safety and reduction of prescription drug abuse and prescription drug diversion.

~~(9) Any person who willfully and knowingly fails to report the dispensing of a controlled substance as required by this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

(8)~~(10)~~ Notwithstanding s. 456.025 and subject to the General Appropriations Act, up to $500,000 of ~~all~~ costs incurred by the department in administering the prescription drug monitoring program may ~~shall~~ be funded through funds available in the Medical Quality Assurance Trust Fund that are related to the regulation of the practice of pharmacy under chapter 465. The department also may apply for and receive federal grants or private funding to fund the prescription drug monitoring program except that the department may not receive funds provided, directly or indirectly, by prescription drug manufacturers ~~applied for or received by the state~~. The department may not commit state funds for the monitoring program if such funds are necessary for the department's regulation of the practice of pharmacy under chapter 465 ~~without ensuring funding is available~~. ~~The prescription drug monitoring program and the~~

~~implementation thereof are contingent upon receipt of the nonstate funding. The department and state government shall cooperate with the direct-support organization established pursuant to subsection (11) in seeking federal grant funds, other nonstate grant funds, gifts, donations, or other private moneys for the department if the costs of doing so are not considered material. Nonmaterial costs for this purpose include, but are not limited to, the costs of mailing and personnel assigned to research or apply for a grant.~~ Notwithstanding the exemptions to competitive-solicitation requirements under s. 287.057(3)(e), the department shall comply with the competitive-solicitation requirements under s. 287.057 for the procurement of any goods or services required by this section. ~~Funds provided, directly or indirectly, by prescription drug manufacturers may not be used to implement the program.~~

~~(11) The department may establish a direct-support organization that has a board consisting of at least five members to provide assistance, funding, and promotional support for the activities authorized for the prescription drug monitoring program.~~

~~(a) As used in this subsection, the term "direct-support organization" means an organization that is:~~

~~1. A Florida corporation not for profit incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.~~

~~2. Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value, or other~~

~~property, either real or personal; and make expenditures or provide funding to or for the direct or indirect benefit of the department in the furtherance of the prescription drug monitoring program.~~

~~(b) The direct-support organization is not considered a lobbying firm within the meaning of s. 11.045.~~

~~(c) The State Surgeon General shall appoint a board of directors for the direct-support organization. Members of the board shall serve at the pleasure of the State Surgeon General. The State Surgeon General shall provide guidance to members of the board to ensure that moneys received by the direct-support organization are not received from inappropriate sources. Inappropriate sources include, but are not limited to, donors, grantors, persons, or organizations that may monetarily or substantively benefit from the purchase of goods or services by the department in furtherance of the prescription drug monitoring program.~~

~~(d) The direct-support organization shall operate under written contract with the department. The contract must, at a minimum, provide for:~~

~~1. Approval of the articles of incorporation and bylaws of the direct-support organization by the department.~~

~~2. Submission of an annual budget for the approval of the department.~~

~~3. Certification by the department that the direct-support organization is complying with the terms of the contract in a manner consistent with and in furtherance of the goals and purposes of the prescription drug monitoring program and in the best interests of the state. Such certification must be made~~

~~annually and reported in the official minutes of a meeting of the direct-support organization.~~

~~4. The reversion, without penalty, to the state of all moneys and property held in trust by the direct-support organization for the benefit of the prescription drug monitoring program if the direct-support organization ceases to exist or if the contract is terminated.~~

~~5. The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.~~

~~6. The disclosure of the material provisions of the contract to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications, and an explanation to such donors of the distinction between the department and the direct-support organization.~~

~~7. The direct-support organization's collecting, expending, and providing of funds to the department for the development, implementation, and operation of the prescription drug monitoring program as described in this section and s. 2, chapter 2009-198, Laws of Florida, as long as the task force is authorized. The direct-support organization may collect and expend funds to be used for the functions of the direct-support organization's board of directors, as necessary and approved by the department. In addition, the direct-support organization may collect and provide funding to the department in furtherance of the prescription drug monitoring program by:~~

~~a. Establishing and administering the prescription drug monitoring program's electronic database, including hardware and~~

~~software.~~

~~b. Conducting studies on the efficiency and effectiveness of the program to include feasibility studies as described in subsection (13).~~

~~c. Providing funds for future enhancements of the program within the intent of this section.~~

~~d. Providing user training of the prescription drug monitoring program, including distribution of materials to promote public awareness and education and conducting workshops or other meetings, for health care practitioners, pharmacists, and others as appropriate.~~

~~e. Providing funds for travel expenses.~~

~~f. Providing funds for administrative costs, including personnel, audits, facilities, and equipment.~~

~~g. Fulfilling all other requirements necessary to implement and operate the program as outlined in this section.~~

~~(c) The activities of the direct-support organization must be consistent with the goals and mission of the department, as determined by the department, and in the best interests of the state. The direct-support organization must obtain a written approval from the department for any activities in support of the prescription drug monitoring program before undertaking those activities.~~

~~(f) The department may permit, without charge, appropriate use of administrative services, property, and facilities of the department by the direct-support organization, subject to this section. The use must be directly in keeping with the approved purposes of the direct-support organization and may not be made at times or places that would unreasonably interfere with~~

~~opportunities for the public to use such facilities for established purposes. Any moneys received from rentals of facilities and properties managed by the department may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the letter of agreement with the department. The letter of agreement must provide that any funds held in the separate depository account in the name of the direct-support organization must revert to the department if the direct-support organization is no longer approved by the department to operate in the best interests of the state.~~

~~(g) The department may adopt rules under s. 120.54 to govern the use of administrative services, property, or facilities of the department or office by the direct-support organization.~~

~~(h) The department may not permit the use of any administrative services, property, or facilities of the state by a direct-support organization if that organization does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.~~

~~(i) The direct-support organization shall provide for an independent annual financial audit in accordance with s. 215.981. Copies of the audit shall be provided to the department and the Office of Policy and Budget in the Executive Office of the Governor.~~

~~(j) The direct-support organization may not exercise any power under s. 617.0302(12) or (16).~~

~~(12) A prescriber or dispenser may have access to the~~

~~information under this section which relates to a patient of that prescriber or dispenser as needed for the purpose of reviewing the patient's controlled drug prescription history. A prescriber or dispenser acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information from the prescription drug monitoring program. This subsection does not create a private cause of action, and a person may not recover damages against a prescriber or dispenser authorized to access information under this subsection for accessing or failing to access such information.~~

(9) ~~(13)~~ To the extent that funding is provided for such purpose through federal or private grants or gifts and other types of available moneys, the department shall study the feasibility of enhancing the prescription drug monitoring program for the purposes of public health initiatives and statistical reporting that respects the privacy of the patient, the prescriber, and the dispenser. Such a study shall be conducted in order to further improve the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs, taking advantage of advances in technology, reducing duplicative prescriptions and the overprescribing of prescription drugs, and reducing drug abuse. The requirements of the National All Schedules Prescription Electronic Reporting (NASPER) Act are authorized in order to apply for federal NASPER funding. ~~In addition, the direct-support organization shall provide funding for the department to conduct training for health care practitioners and other appropriate persons in using the monitoring program to support~~

~~the program enhancements.~~

(10) ~~(14) A pharmacist, pharmacy, or dispensing health care practitioner or his or her agent,~~ Before releasing a controlled substance to any person not known to him or her ~~such dispenser~~, the dispenser shall require the person purchasing, receiving, or otherwise acquiring the controlled substance to present valid photographic identification or other verification of his or her identity ~~to the dispenser~~. If the person does not have proper identification, the dispenser may verify the validity of the prescription and the identity of the patient with the prescriber or his or her authorized agent. Verification of health plan eligibility through a real-time inquiry or adjudication system is ~~will be~~ considered to be proper identification. This subsection does not apply in an institutional setting or to a long-term care facility, including, but not limited to, an assisted living facility or a hospital to which patients are admitted. As used in this subsection, the term "proper identification" means an identification that is issued by a state or the Federal Government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

~~(15) The Agency for Health Care Administration shall continue the promotion of electronic prescribing by health care practitioners, health care facilities, and pharmacies under s. 408.0611.~~

~~(16) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this section, which shall include as necessary the reporting, accessing, evaluation, management, development, implementation,~~

~~operation, and storage of information within the monitoring program's system.~~

Section 2. 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)

4/9/2014
Meeting Date

Topic PRESCRIPTION DRUG MONITORING PROGRAM

Bill Number 862 *(if applicable)*

Name MICHAEL JACKSON

Amendment Barcode *(if applicable)*

Job Title EVP & CEO

Address 610 N. ADAMS ST
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone (850) 222-2400

E-mail MJACKSON@PHARMFLA.COM

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

Representing FLORIDA PHARMACY ASSOCIATION

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

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

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

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

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)

4/9/14
Meeting Date

Topic Rx Drug Monitoring — Bill Number SB 862 *(if applicable)*

Name Larry Gonzalez — Amendment Barcode _____ *(if applicable)*

Job Title General Counsel, FSHP*

Address 223 S. Gadsden St — Phone 850-222-0465
Street

Tallahassee, FL 32301 — E-mail lawgon2@earthlink.net
City *State* *Zip*

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-14
Meeting Date

Topic PRESCIPTION DRUG MONITORING Bill Number SB 862 *(if applicable)*

Name LOU MARINO Amendment Barcode _____ *(if applicable)*

Job Title DEPUTY SHERIFF

Address _____ Phone _____
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA SHERIFFS 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)

Meeting Date

Topic _____ Bill Number 902 *(if applicable)*

Name Electra Bustle Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ Phone _____
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Sheriffs 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.

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

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE ON HEALTH POLICY

Location
530 Knott Building

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

Senator Aaron Bean, *Chair*
Senator Eleanor Sobel, *Vice Chair*

Professional Staff: Sandra R. Stovall, *Staff Director*

Senate's Website: *www.flsenate.gov*

April 2, 2014

Senator John Thrasher
Chairman
Rules Committee
402 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Thrasher:

I am requesting that SB 862 (OGSR/Department of Health), a Health Policy committee bill, be placed on the agenda of the committee's next scheduled meeting. Your consideration would be greatly appreciated.

If you have questions, please call 487-5824.

Respectively,

Aaron Bean

Aaron Bean
State Senator, District 4

cc: John Phelps, Staff Director
Rules Committee

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 866
INTRODUCER:	Governmental Oversight and Accountability Committee and Health Policy Committee
SUBJECT:	OGSR/Department of Health
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Looke	Stovall		**HP SPB 7014 as introduced**
1.	Kim	McVaney	GO	**Fav/CS**
2.	Looke	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 866 amends, s. 893.0551, F.S., the public records exemption for the prescription drug monitoring program (PDMP). Currently, personal identifying information in the prescription drug monitoring program (PDMP) is confidential and exempt from public records may only be released in limited circumstances.

CS/SB 866 modifies the conditions for releasing confidential and exempt records in the following manner:

- Assistant Attorneys General prosecuting prescription Medicaid fraud cases may only disclose relevant information to a criminal justice agency.
- Department of Health's (DOH's) health care regulatory boards may receive information, however, they may only disclose relevant information to a law enforcement agency.
- Law enforcement agencies may only have access to confidential information if they have entered into a user agreement with the DOH;
- Law enforcement agencies may disclose only relevant information to a criminal justice agency.
- Health care practitioners may disclose a patient's information to the patient.
- Consultants monitoring a health care practitioner with a substance abuse problem may have access to the practitioner's profile.
- State Attorneys may release information only in response to a request for discovery or pursuant to a court order.

The bill saves the exemption for personal identifying information in the PDMP from repeal on October 2, 2014.

II. Present Situation:

Florida's Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.[1] Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.[2]

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.[3] Dispensers have reported over 87 million controlled substance prescriptions to the PDMP since its inception.[4] Health care practitioners began accessing the PDMP on October 17, 2011.[5] Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.[6]

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information[7] of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[8]

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.[9] Currently, prescribers are not required to consult the PDMP database prior to prescribing a controlled substance for a patient however physicians and pharmacists queried the database more than 3.7 million times during fiscal year 2012-2013.[10]

Indirect access to the PDMP database is provided to:

- The DOH or its relevant health care regulatory boards;

---

[1] S. 893.055(2)(a), F.S.
[2] S. 893.055(3)(a)-(c), F.S.
[3] 2012-2013 PDMP Annual Report, available at http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf, last visited on Jan. 9, 2014.
[4] Id.
[5] Id.
[6] Id.
[7] Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.
[8] S. 893.0551(2)(a)-(h), F.S.
[9] S. 893.055(7)(b), F.S.
[10] Supra at n. 3

- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations[11] involving potential criminal activity, fraud, or theft regarding prescribed controlled substances; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.[12]

Law enforcement agencies may receive information from the PDMP database through the procedures outlined in the DOH's "Training Guide for Law Enforcement and Investigative Agencies."[13] Agencies that wish to gain access to the PDMP database must first appoint a sworn law enforcement officer as an administrator who verifies and credentials other law enforcement officers' within the same agency.[14] The administrator may then register individual law enforcement officers with the DOH.

Registered law enforcement officers may not directly access the PDMP, instead when they wish to obtain information from the PDMP database, they must submit a query to the DOH.[15] These queries may be for a patient's history, a prescriber's history, or a pharmacy's dispensing history.[16] The registered law enforcement officer must fill out a form indicating what type of search they want to perform, what parameters (name, date, time period, etc.) they want to include, and some details of the active investigation they are pursuing including a case number. This form is submitted to the DOH and, in most instances, the requested information is made available to the requesting officer. In some cases a request is denied. Generally, a request is denied due to lack of sufficient identifying information (incorrect spelling of a name, wrong social security number, etc.) or, alternatively, a request may return no results. The DOH may also deny a request that it finds not to be authentic or authorized.[17]

Prescription Drug Monitoring Programs in Other States

As of December 2013, every state except Missouri has passed PDMP legislation and only New Hampshire and Washington D.C. have yet to bring their PDMP to operation status.[18] The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.[19] All PDMPs examined are either

[11] S. 893.055(1)(h), F.S., defines an "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
[12] S. 893.055(7)(c)1.-4., F.S.
[13] This training guide may be found at http://www.hidinc.com/assets/files/flpdms/FL%20PDMP_Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf, last viewed on Jan. 9, 2014.
[14] See the DOH's "Law enforcement administrator appointment form," available at http://www.floridahealth.gov/reports-and-data/e-forcse/law-enforcement-information/_documents/admin-appoint-form.pdf, last visited on Jan. 9, 2014.
[15] During FY 2012-2013 a total of 487 authorized law enforcement users queried the PDMP database 32,839 times. Id. at note 3.
[16] Id. at note 11.
[17] S. 893.055(7)(c), F.S., requires the DOH to verify a request as being "authentic and authorized" before releasing information from the PDMP.
[18] National Alliance for Model State Drug Laws. *Compilation of State Prescription Monitoring Programs Maps*, can be found at http://www.namsdl.org/library/6D4C4D9F-65BE-F4BB-A428B392538E0663/, last visited on Jan. 10, 2014.
[19] *OPPAGA Review of State Prescription Drug Monitoring Programs*, Jan. 31, 2013, on file with the Senate Health Policy Committee.

run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the PDMP and primarily encourage prescribers to use the database through education and outreach programs.[20] Only three of the 26 states require prescribers to access the database prior to prescribing most or all controlled substances.[21] In 17 of 23 states, including Florida, accessing the database is strictly voluntary and in the remaining six states accessing the database is only required under limited circumstances.[22]

All states reviewed have the authority to take punitive action against dispensers of prescription drugs that do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, and/or criminal charges, however, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

As of December 5, 2013, 18 states require law enforcement to obtain a search warrant, subpoena, court order, or other type of judicial process in order to access the information in their state's PDMP.[23]

Unauthorized Release of PDMP Data

In the early summer of 2013, the PDMP information of approximately 3,300 individuals was improperly shared with a person or persons who were not authorized to obtain such information.[24] The original information was released from the PDMP by the DOH during a Drug Enforcement Administration (DEA) investigation of a ring of individuals who used four doctor's information to conduct prescription fraud. Although as a result of the investigation only six individuals were ultimately charged, the information of approximately 3,300 individuals was released to the DEA because the DEA searched the PDMP for the records of all the patients of the four doctors who had been the victims of the prescription drug fraud.[25] During the investigation and the resulting prosecution, the DEA shared the full file with the prosecutor who, in turn, shared the full file with the defense attorney during discovery. The improper release of information occurred when a defense attorney associated with the case shared the file with a colleague who was not associated with the case.[26]

[20] Id., p. 8
[21] Kentucky, New Mexico, and New York. Id., p. 4
[22] These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if there is a reasonable suspicion that the patient it abusing drugs, or if the prescription was written in a pain clinic. Id.
[23] These states are: Alaska, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, and Wisconsin. See the National Alliance for Model State Drug Laws, *Law Enforcement Access to State PMP Data*, available at http://www.namsdl.org/library/C4AA9EA3-65BE-F4BB-AAFBAB1F5736F070/, last visited on Jan 10, 2014.
[24] See John Woodrow Cox, *Did Florida's prescription pill database really spring a leak?*, Tampa Bay Times, July 5, 2013. Available at http://www.tampabay.com/news/politics/did-floridas-prescription-pill-database-really-spring-a-leak/2130108, Last visited on Jan. 9, 2014, and see the DOH presentation to the Senate Health Policy Committee on the PDMP, Sep. 24, 2013, on file with Health Policy Committee staff.
[25] Id.
[26] Id.

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[27] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[28] Article I, s. 24 of the State 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 respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[29] which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

> Every 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.

Unless specifically exempted, all agency[30] records are available for public inspection. The term "public record" is broadly defined 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.[31]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.[32]

---

[27] Section 1390, 1391 Florida Statutes. (Rev. 1892).
[28] Article I, s. 24 of the State Constitution.
[29] Chapter 119, F.S.
[30] 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, 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."
[31] S. 119.011(12), F.S.
[32] *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.[33] An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.[34] A bill enacting an exemption[35] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[36]

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.[37] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[38]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act)[39] provides for the systematic review, through a five year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Sunshine Law.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- 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.[40]

[33] Article I, s. 24(c) of the State Constitution.
[34] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[35] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[36] Article I, s. 24(c) of the State Constitution.
[37] Attorney General Opinion 85-62.
[38] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[39] S. 119.15, F.S.
[40] S. 119.15(6)(b), F.S.

The Act also requires the Legislature to consider the following:

- 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?

While the standards in the 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.[41] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

> notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Senate Review of s. 893.0551, F.S.

In the course of conducting the Open Government Sunset Review of s. 893.0551, F.S., Senate Health Policy Committee staff invited input from various stake holders. Staff met with representatives from various agencies and groups including the DOH, the Florida Department of Law Enforcement, the DEA, Florida Sheriffs Association, Florida Police Chiefs Association, the Attorney General's office, and various advocacy groups representing pharmacists and pain management physicians. Staff also observed several meetings held by the DOH on proposed rule amendments for the PDMP.[42]

---

[41] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

[42] CS/SB 866 is not linked to CS/SB 862, which amends the statute governing prescription drug monitoring program, s. 893.055, F.S., however the two bills are highly related. CS/SB 862 makes substantive changes to:

- Require the DOH to adopt a user agreement rule that requires users to maintain procedures to protect the confidentiality of information from the prescription drug monitoring program's database;
- Require a law enforcement agency to execute the user agreement before information from the prescription drug monitoring program is released to the agency;
- Allow the DOH to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists;
- Provide requirements for the release of information from the prescription drug monitoring program's database shared with a state attorney in response to a discovery demand;
- Authorize a law enforcement agency to use information from the prescription drug program database to determine whether an active investigation is warranted;
- Allow DOH to provide a patient advisory report to the appropriate health care practitioner if the manager of the prescription drug monitoring program determines that a specified pattern exists;

III. Effect of Proposed Changes:

The bill saves the public records exemption for personal identifying information in the PDMP from repeal and enhances the security pertaining to information that is released from the PDMP.

The following entities may receive and disclose confidential and exempt information from the PDMP:

- Assistant Attorneys General prosecuting prescription Medicaid fraud cases may only disclose information relevant to an active investigation prompting the request for information from the PDMP. Disclosure may be made to a criminal justice agency, and Assistant Attorneys General must take steps to ensure the continued confidentiality of all confidential and exempt information, including making redactions.
- DOH's health care regulatory boards may release information relevant to a specific investigation to a law enforcement agency. The boards must take steps to ensure the continued confidentiality of all confidential and exempt information, including making redactions.
- Law enforcement agencies may only have access to confidential and exempt information if they have entered into a user agreement with the DOH. Law enforcement agencies may disclose information to a criminal justice agency, but must take steps to ensure the continued confidentiality of all confidential and exempt information, including making redactions.
- Health care practitioners may disclose a patient's PDMP information to the patient and put the information in the patient's file.
- Consultants monitoring a health care practitioner with substance abuse problems may have access to the practitioner's profile.
- State Attorneys may only release information directly related to a criminal case in response to a request for discovery. Information that is unrelated to the criminal case may only be released pursuant to a court order.

This bill also deletes the Open Government Sunset Review language that automatically repeals this section of law on October 2, 2014.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

- Define the term "dispense" or "dispensing" using existing language in the statute and in the definitions section of chapter 893, F.S.;
- Allow an impaired practitioner consultant retained by the DOH access to information in the prescription drug monitoring program's database which relates to a practitioner who has agreed to be evaluated or monitored by the consultant.

B. Public Records/Open Meetings Issues:

This bill does not create or expand a public records exemption and therefore does not require two-thirds vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Attorney General's office, the DOH's regulatory boards, and law enforcement agencies may incur costs associated with redacting or deleting non-relevant PDMP information.

VI. Technical Deficiencies:

This bill does not state with specificity what information is considered "relevant" or "nonrelevant" to an investigation. This is a vague and subjective standard for each agency. For example, information that is not relevant to a health regulatory board's investigation may be relevant to a law enforcement agency's investigation.

By requiring agencies to redact information before passing it along to the next agency, it may make it difficult to identify, investigate and prosecute cases involving several conspirators or witnesses.

CS/SB 866 makes several references to provisions CS/SB 862. CS/SB 866 and CS/SB 862 are not linked bills and if CS/SB 862 does not pass, CS/SB 866 will make references to provisions which do not exist.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.0551 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on April 3, 2014:
The CS makes the following substantive changes:

- Provides that information may be released to a law enforcement agency pursuant to a user agreement, rather than a court order.
- Permits DOH consultants who monitor health care practitioners with substance abuse problems to have access to PDMP information.
- Provides that state attorneys may only release relevant information if a demand for discovery is made in a criminal case. A state attorney may only release unrelated information pursuant to a court order.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Health Policy

585-03735-14 2014866c1

A bill to be entitled

An act relating to a review under the Open Government Sunshine Review Act; amending s. 893.0551, F.S., which makes confidential and exempt certain information of a patient or patient's agent, health care practitioner, and others held by the Department of Health; specifying that the Attorney General, health care regulatory boards, and law enforcement agencies may disclose certain confidential and exempt information to certain entities only if such information is relevant to an active investigation that prompted the request for the information; requiring the Attorney General, health care regulatory boards, and law enforcement agencies to take certain steps to ensure the continued confidentiality of all nonrelevant confidential and exempt information before disclosing such information; requiring a law enforcement agency to enter into a user agreement before such agency may receive information from the prescription drug monitoring database; requiring the law enforcement agency to ensure the continued confidentiality of all confidential and exempt information; authorizing a health care practitioner to share a patient's information with that patient and put such information in the patient's medical record upon consent; authorizing certain impaired practitioner consultants to access information for a specified purpose; authorizing the department to disclose a patient advisory report to a health care practitioner under

585-03735-14 2014866c1

certain circumstances; prohibiting an agency or person who obtains specified confidential and exempt information from disclosing such information except under certain circumstances; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 893.0551, Florida Statutes, is amended to read:

893.0551 Public records exemption for the prescription drug monitoring program.—

(1) As used in ~~For purposes of~~ this section, the term:

(a) "Active investigation" has the same meaning as provided in s. 893.055.

(b) "Dispenser" has the same meaning as provided in s. 893.055.

(c) "Health care practitioner" or "practitioner" has the same meaning as provided in s. 893.055.

(d) "Health care regulatory board" has the same meaning as provided in s. 893.055.

(e) "Law enforcement agency" has the same meaning as provided in s. 893.055.

(f) "Pharmacist" means a ~~any~~ person licensed under chapter 465 to practice the profession of pharmacy.

(g) "Pharmacy" has the same meaning as provided in s. 893.055.

(h) "Prescriber" has the same meaning as provided in s.

893.055.

(2) The following information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy which ~~that~~ is contained in records held by the department under s. 893.055 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Name.

(b) Address.

(c) Telephone number.

(d) Insurance plan number.

(e) Government-issued identification number.

(f) Provider number.

(g) Drug Enforcement Administration number.

(h) Any other unique identifying information or number.

(3) The department shall disclose such confidential and exempt information to the following persons or entities after using a verification process to ensure the legitimacy of that person's or entity's request for the information:

(a) The Attorney General and his or her designee when working on Medicaid fraud cases involving prescription drugs or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs. The Attorney General or his or her designee may disclose to a criminal justice agency as defined in s. 119.011 only ~~the~~ confidential and exempt information received from the department which is relevant to ~~a criminal justice agency as defined in s. 119.011 as part of~~ an active investigation that prompted the

request for the information ~~that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances~~. Before disclosing any information to a criminal justice agency, the Attorney General or his or her designee must take steps to ensure the continued confidentiality of all confidential and exempt information. At a minimum, these steps must include redacting or deleting all nonrelevant information. The Attorney General's Medicaid fraud investigators may not have direct access to the department's database.

(b) The department's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a specific controlled substances investigation for prescription drugs involving a designated person. The health care regulatory boards may request information from the department but may not have direct access to its database. The health care regulatory boards may provide ~~such information~~ to a law enforcement agency pursuant to ss. 456.066 and 456.073 only information that is relevant to the specific controlled substances investigation that prompted the request for the information. Before disclosing any information to a law enforcement agency, a healthcare regulatory board must take steps to ensure the continued confidentiality of all confidential and exempt information. At a minimum, these steps must include redacting or deleting all nonrelevant information.

(c) A law enforcement agency that has initiated an active investigation involving a specific violation of law regarding

prescription drug abuse or diversion of prescribed controlled substances and that has entered into a user agreement with the department as required under s. 893.055. The law enforcement agency may disclose to a criminal justice agency as defined in s. 119.011 only ~~the~~ confidential and exempt information received from the department which is relevant to ~~a criminal justice agency as defined in s. 119.011 as part of~~ an active investigation that prompted the request for the information ~~that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances~~. Before disclosing any information to a criminal justice agency, a law enforcement agency must take steps to ensure the continued confidentiality of all confidential and exempt information. At a minimum, these steps must include redacting or deleting all nonrelevant information. A law enforcement agency may request information from the department but may not have direct access to its database.

(d) A health care practitioner who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055. A health care practitioner who receives a current patient's confidential and exempt information under this subsection may disclose such information to the patient or the patient's legal representative. Upon the patient's or the legal representative's written consent, the health care practitioner may place such information in the patient's medical record, including electronic medical records, and may disclose such information subject to the requirements of s. 456.057.

(e) A pharmacist who certifies that the requested

information will be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055.

(f) A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable, making a request as provided in s. 893.055(7)(c)4.

(g) The patient's pharmacy, prescriber, or dispenser who certifies that the information is necessary to provide medical treatment to his or her current patient in accordance with s. 893.055.

(h) An impaired practitioner consultant who is retained by the department under s. 456.076 for the purpose of reviewing the controlled substance prescription history of a practitioner who has agreed to be evaluated or monitored by the consultant.

(4) If the department determines that there exists a pattern of controlled substance abuse consistent with department rules for identifying indicators of such abuse, the department may provide a patient advisory report to an appropriate health care practitioner ~~shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055(7)(f)~~. ~~The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).~~

(5) An ~~Any~~ agency or person who obtains any ~~such~~ confidential and exempt information specified in ~~pursuant to~~ this section must maintain the confidential and exempt status of that information and may not disclose such information unless

authorized under this section. Information shared with a state attorney pursuant to paragraph (3)(a) or paragraph (3)(c) may be released only in response to a discovery demand if such information is directly related to the criminal case for which the information was requested. Unrelated information may be released only upon an order of a court of competent jurisdiction as provided in s. 893.055(6)(c).

(6) A ~~Any~~ person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(7) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. 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)

4-9-14
Meeting Date

Topic (Governmental Oversight; Accountability / Health Policy" Open Government Sunset Review / Dept. of Health) Bill Number SB 866 *(if applicable)*

Name Tom Bertolami Amendment Barcode *(if applicable)*

Job Title Deputy Sheriff

Address 250 N. Beach St. Phone 386-254-4662
Street

Daytona Bch, Fl. 32114 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Sheriff's 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

COMMITTEE ON HEALTH POLICY

Location
530 Knott Building

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

Senator Aaron Bean, *Chair*
Senator Eleanor Sobel, *Vice Chair*

Professional Staff: Sandra R. Stovall, *Staff Director*

Senate's Website: *www.flsenate.gov*

April 2, 2014

Senator John Thrasher
Chairman
Rules Committee
402 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Thrasher:

I am requesting that SB 866 (Prescription Drug Monitoring), a Health Policy committee bill, be placed on the agenda of the committee's next scheduled meeting. Your consideration would be greatly appreciated.

If you have questions, please call 487-5824.

Respectively,

Aaron Bean

Aaron Bean
State Senator, District 4

cc: John Phelps, Staff Director
Rules Committee

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 922
INTRODUCER:	Senator Brandes
SUBJECT:	Renewable Energy Source Devices
DATE:	April 8, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Favorable**
2.	White	Yeatman	CA	**Favorable**
3.	Wiehle	Phelps	RC	**Pre-meeting**

I. Summary:

SB 922 is implementing legislation for SJR 916 or a similar joint resolution having substantially the same specific intent and purpose. SB 922 amends s. 193.624, F.S., on assessment of residential property for ad valorem tax purposes. The bill changes the definition of the term "renewable energy source device" to require that such a device be installed by an end-use customer and be primarily intended to offset part or all of the end-use customer's electricity demands. The bill deletes existing language that limits application of the statute to real property used for residential purposes, thereby expanding application of the statute to all real property. These changes would apply to nonresidential real property upon which a renewable energy source device is installed on or after January 1, 2015, and to all assessments beginning on that date.

The bill takes effect January 1, 2015, if SJR 916 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2014 or at an earlier special election specifically authorized by law for that purpose.

II. Present Situation:

Property Tax Assessments

Article VII, s. 4, Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

Both the constitution and the statutes require that a property appraiser consider changes, additions, or improvements to residential property in determining the property's just valuation.[2]

Initial Constitutional Ad Valorem Renewable Energy Source Incentive

Property tax incentives to promote renewable energy in Florida date back over 30 years. In 1980, Florida voters added the following ad valorem tax exemption authorization to the Florida Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, for the period of time fixed by general law not to exceed ten years.[3]

During that same year, the Legislature enacted s. 196.175, F.S., to implement the constitutional amendment.[4] The legislation limited the ad valorem exemption to the lesser of:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

The statute limited the exemption to a 10-year period, and the statute itself expired after 10 years. Specifically, the statute was in effect from January 1, 1980, through December 31, 1990. Therefore, no exemptions were granted after December 31, 1990, and exemptions granted in December 1990 expired 10 years later in December 2000. At this point, the statute was rendered inoperative and art. VII, s. 3(d), Florida Constitution, was no longer implemented by general law.

2008: Legislative Action and Constitutional Amendment 3

On April 30, 2008, the Legislature removed the expiration date of the property tax exemption for renewable energy source devices.[5] This allowed property owners to apply again for the exemption effective January 1, 2009, again with a 10-year life span.

In November 2008, Florida voters approved the following constitutional amendment placed on the ballot by the Florida Tax and Budget Reform Commission (TBRC):

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

[2] FLA. CONST. art. VII, s. 4. and ss. 193.011, 193.155(4), and 193.1554(6), F.S.
[3] FLA. CONST. art. VII, s. 3(d).
[4] Section 196.175, F.S.
[5] House Bill 7135, Ch. 2008-227, Laws of Florida.

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
(2) The installation of a renewable energy source device.[6]

The amendment was permissive; unless the Legislature enacted implementing legislation, it had no effect. The 2008 amendment also repealed the previous constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated. Thus, the first constitutional provisions granting the ad valorem tax exemptions were repealed in 2008 with the related implementing language in s. 196.175, F.S., and a new set of ad valorem tax exemptions were added to the constitution, but with no implementing statute.

2009 Senate Interim Report

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.[7] The report reviewed proposed legislation filed during the 2009 legislative session to implement the constitutional amendment. It also discussed property tax incentives that are provided in other states for installing renewable energy equipment or improving disaster resistance.[8]

At the time of the interim report, 17 states had enacted property tax incentives for renewable energy equipment including devices related to solar, wind, and geothermal energy. Although the report noted that tax incentives for improvements related to disaster preparedness are less common, three states had enacted such laws.

2013 Legislation

After several attempts to implement the 2008 constitutional amendment, implementing legislation was enacted in the 2013 Regular Session.[9] That statute provides that in determining the assessed value of real property used for residential purposes, a property appraiser cannot consider an increase in the just value of the property attributable to the installation of a renewable energy source device.[10] The statute defines the term "renewable energy source device" to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.

[6] FLA. CONST. art. VII, s. 4.
[7] Comm. on Finance and Tax, The Florida Senate, *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, (Interim Report 2010-116) (Oct. 2009).
[8] *Id. citing State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).
[9] HB 277, Ch. 2013-77, Laws of Florida.
[10] Section 193.624, F.S.

- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The statute applied to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property, and to assessments beginning January 1, 2014.

The statutes that provide for homestead[11] and non-homestead residential[12] property assessment were amended by cross reference to include this new prohibition.

Non-utility Production of Electricity

Non-Utility Sales to the Public

The Florida Supreme Court has held that the Florida Statutes mandate that any person who sells electricity to even a single person is a public utility subject to regulation by the Florida Public Service Commission (PSC).[13] The facts of that case were as follows. PW Ventures signed a letter of intent with Pratt and Whitney to provide electric and thermal power at Pratt's industrial complex in Palm Beach County. PW Ventures proposed to construct, own, and operate a cogeneration electric power plant on land leased from Pratt and to sell its output to Pratt under a long-term contract. Before proceeding with construction of the plant, PW Ventures sought a declaratory statement from the PSC that it would not be a public utility subject to PSC regulation. After a hearing, the PSC ruled that PW Ventures proposed transaction with Pratt fell within its regulatory jurisdiction.

The Court reviewed similar Florida regulatory statutes where the Legislature had expressly provided for exclusions from regulation based on a stated limited number of customers and found that the failure of the Legislature to create such an exclusion for electric services indicated its intent that the term "to the public" include a sale to even one person.

The Court also reviewed the statutory system of electric utility regulation[14] and found that the regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. The Court noted that if the proposed sale of electricity by PW Ventures was outside of PSC jurisdiction, duplication of facilities could occur in contradiction to

[11] Section 193.155(4), F.S.
[12] Section 193.1554(6), F.S.
[13] *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (1988).
[14] Chapter 366, F.S.

the statutory direction to the PSC to exercise its powers to avoid uneconomic duplication of generation, transmission, and distribution facilities.[15] The Court stated that what PW Ventures proposed was to go into an area served by a utility and take one of its major customers, an interpretation which could allow other ventures to enter into similar contracts with other high use industrial complexes on a one-to-one basis and drastically change the regulatory scheme in this state. "The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced."[16] Finally the Court found that the Legislature had determined that the protection of the public interest required limiting competition in the sale of electric service.

Based upon these findings, the Court upheld the PSC's order that under the proposed arrangement PW Ventures would be a public utility subject to PSC regulation.

Self-Generation

PW Ventures

The prohibition on non-utility sales of electricity does not prohibit a person or business from producing electricity solely to furnish its own power. In its finding that the Legislature determined that the protection of the public interest required limiting competition in the sale of electric service, the Florida Supreme Court expressly noted that this determination of public interest did not require a prohibition against self-generation.[17]

Cogeneration and Small Power Producers

The statutes expressly provide for self-generation, and for the sale of any excess electricity to a public utility. A public utility is required to purchase electricity from a cogenerator[18] or small power producer[19] located in that public utility's service territory.[20] The PSC is required to establish guidelines relating to the purchase of power or energy and may set rates at which a public utility must purchase the power or energy.[21] In fixing rates, the PSC must authorize a rate equal to the purchasing utility's full avoided costs, defined as the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.[22]

[15] Section 366.04(3), Florida Statutes (1985).
[16] *PW Ventures*, page 283.
[17] *Id*, page 284.
[18] Cogeneration is the sequential production of thermal energy and electrical or mechanical energy from the same fuel source. *Florida's Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 30.
[19] A small-power producer generates electricity from facilities using biomass, solid waste, geothermal energy or renewable resources (including wind, solar, and small hydroelectric) as their primary energy sources. *Florida's Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 188.
[20] Section 366.051, F.S. This was mandated by the federal Public Utility Regulatory Policies Act of 1978, which required that electric utilities purchase the energy produced from qualifying facilities (cogenerators and small power producers) at the utility's avoided cost of generation.
[21] *Id*.
[22] *Id*.

Standard Purchase Contract

Each public utility and each municipal electric utility or rural electric cooperative that meets specified criteria[23] must continuously offer a purchase contract to producers of renewable energy.[24, 25] The contracts must contain payment provisions for energy and capacity (if appropriate) which are based upon the utility's full avoided costs. Each contract must be for a term of at least 10 years.

Net Metering

Each public utility must develop a standardized interconnection agreement and net metering[26] program for customer-owned renewable generation.[27, 28] The PSC must establish requirements relating to the expedited interconnection and net metering of customer-owned renewable generation by public utilities and was authorized to adopt rules for this purpose. Additionally, each municipal electric utility and rural electric cooperative that sells electricity at retail is encouraged to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation.[29] In any purchase contract, the contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system.

PSC Net Metering Rule

Pursuant to the requirements of the net metering statute, the PSC adopted a rule requiring each investor-owned utility[30] to develop a Standard Interconnection Agreement for expedited interconnection of customer-owned renewable generation[31] up to 2 MW and file for Commission approval of that agreement.[32] A utility must enable net metering[33] for each customer-owned renewable generation facility interconnected to the utility's electrical grid by installing, at no additional cost to the customer, metering equipment capable of measuring the difference between

[23] This includes the Orlando Utilities Commission and JEA (formerly Jacksonville Electric Authority).

[24] Section 366.91(2)(d), F.S., defines the term "renewable energy" means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

[25] Section 366.91(3) and (4), F.S.

[26] The term "net metering" is defined to mean a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site. Section 366.91(2)(c), F.S.

[27] The term "customer-owned renewable generation" is defined to mean an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy. Section 366.91(2)(b), F.S.

[28] Section 366.91(5), F.S.

[29] Section 366.91(6), F.S.

[30] This is Florida Power and Light, Duke Energy Florida, Tampa Electric Company, Gulf Power, and Florida Public Utilities Company.

[31] The rule defines the term "customer-owned renewable generation" to mean an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy. The term "customer-owned renewable generation" does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

[32] Rule 25-6.065 Interconnection and Net Metering of Customer-Owned Renewable Generation, Florida Administrative Code.

[33] The rule defines the term "net metering" to mean a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on-site.

the electricity supplied to the customer from the utility and the electricity generated by the customer and delivered to the utility's electric grid. During any billing cycle, excess customer-owned renewable generation delivered to the utility's electric grid must be credited to the customer's energy consumption for the next month's billing cycle. These energy credits must accumulate and be used to offset the customer's energy usage in subsequent months for a period of not more than twelve months. At the end of each calendar year, the utility must pay the customer for any unused energy credits at an average annual rate based on the investor-owned utility's COG-1, as-available energy tariff.[34, 35] The customer must continue to pay the applicable customer charge and applicable demand charge for the maximum measured demand during the billing period.[36]

III. Effect of Proposed Changes:

SB 922 is implementing legislation for SJR 916.

SB 922 amends s. 193.624, F.S., to delete language that limits application of the statute to real property used for residential purposes, thereby expanding application of the statute to all real property. The bill changes the definition of the term "renewable energy source device" to require that such a device be installed by an end-use customer and be primarily intended to offset part or all of the end-use customer's electricity demands. This requirement precludes any person or entity from getting an exclusion from ad valorem taxes for the value of a renewable energy source device that was installed primarily for the purpose of producing electricity for sale, whether installed by a non-utility or a utility. These changes would apply to nonresidential real property upon which a renewable energy source device is installed on or after January 1, 2015, and to all assessments beginning on that date.

The bill takes effect January 1, 2015, if SJR 916 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2014 or at an earlier special election specifically authorized by law for that purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[34] The investor-owned utility's COG-1, as-available energy tariff price is the price a utility would receive if it sold excess electricity on the wholesale market with no contract. This omits any capacity payment and is basically fuel cost. It is the equivalent of the utility's as-available, full avoided cost price, which means it is basically the cost of fuel for that utility to produce that amount of electricity at that time.

[35] Essentially this means that the primary benefit to the customer is in producing electricity and avoiding that amount of purchases from the utility. An additional benefit is that excess-generation credits are carried over and when used also offset purchases at the retail price. If these carried-over credits are not used before the end of a calendar year (or before leaving the utility) they are purchased at the utility's cost of producing energy, which is basically its fuel cost.

[36] This ensures that the customer continues to pay its share of cost recovery for generation and transmission facilities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If the SJR passes both the Legislature and the electorate, and if SB 922 or other similar implementing legislation becomes law, the Revenue Estimating Conference has determined that local governments' ad valorem tax revenues may be reduced by the estimated amounts[37] found in the table below.

Table 1. Estimated Fiscal Impact (Millions)[38]

	2014-15	2015-16	2016-17	2017-18	2018-19
Fiscal Impact to Local Ad Valorem Tax Revenues	0	2.1	3.8	5.4	6.7

B. Private Sector Impact:

The bill may provide an incentive for owners of nonresidential property to install renewable energy source devices as this will no longer result in increased ad valorem taxes.

The Solar Foundation recently released its *National Solar Jobs Census 2012: A Review of the U.S. Solar Workforce*. The report notes a 77 percent compound annual growth rate in photovoltaic installed capacity between 2006 and 2011[39] and a total of 119,016 solar industry jobs in 2012, an increase of 13.2 percent over 2011.[40] The report also notes:

> The results of this year's Census confirm that one of the major factors contributing to this growth is the continued decline in the price of solar products. Over the last three years, component prices have dropped dramatically, with a 44% decline in 2011 alone…. This decline in PV module prices is mirrored by a similar decrease in total average installed system costs, estimated to have declined by one-third over the same period.[41]

[37] Revenue Estimating Conference, Impact Conference, *Analysis of SB 922* (2014).
[38] Revenue Estimating Conference, Impact Conference, *Analysis of SB 922* (2014).
[39] Page 9.
[40] Page 17.
[41] Page 10.

This report indicates that one of the major drivers in increasing photovoltaic installed capacity and solar jobs is the decreasing overall cost of this capacity, which may include the avoidance of an increase in ad valorem tax that this bill allows.

As long as any excess electricity produced by any new renewable energy source device is sold to utilities under current law (at the purchasing utility's full avoided cost[42] and with no third party sales), there will be no near-term fiscal impact on utilities' ratepayers. There may be some customer fiscal impacts in the longer term. Some potential impacts could be positive; for example, the avoidance of the costs of construction of a new power plant. Some potential impacts could be negative. The Florida Supreme Court noted in *PW Ventures* that when a regulated utility loses sales revenue, this revenue must be made up by the remaining customers since the fixed costs of the regulated systems would not have been reduced. Loss of one large customer is not the only event that will produce this result; it will happen any time a utility loses enough sales revenue that it can no longer recover all of its costs, including a loss of revenue due to customers' energy production or, for that matter, customers' conservation and efficiency efforts.

C. Government Sector Impact:

The bill may have some impact on the workload of property appraisers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SJR 916 proposes a constitutional amendment to existing provisions that authorize the Legislature to prohibit property appraisers, in appraising real property for ad valorem tax purposes, from considering the value of improvements to residential real property that constitute either enhancements to the property's wind resistance or the installation of a renewable energy device. The bill preserves the application of the provisions relating to wind resistance to residential real property only. It expands the provisions on installation of a renewable energy source device to apply to all real property, but limits these provisions to apply only when the installation is by an "end-use customer" of a device "that is primarily intended to offset part or all of that end-use customer's electricity demands."

SB 922 provides the term "renewable energy source device" means any of the following equipment *installed by an end-use customer* that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits *and that is primarily intended to offset part or all of that end-use customer's electricity demands*.

The Department of Revenue's Legislative Bill Analysis states that this language makes it "unclear whether the property appraiser must consider the value of the renewable energy source device should that end-use customer no longer hold title to the real property." However, the benefit of exclusion would likely attach to the property and transfer with the property upon any

[42] See discussion above under *Self-Generation*.

conveyance, depending upon determination of the property appraiser. The bill conditions application of the exclusion on the installation of a renewable energy source device being done by a property owner/customer primarily to offset that customer's purchases of electricity from a utility. The installation **does not qualify** for the benefit of exclusion from ad valorem tax if done primarily for the purpose of producing electricity for sale, either by a utility or a non-utility. A property appraiser will have to determine that the qualification is met in order to apply the exclusion, but once the improvement is determined to qualify, the benefit attaches to the property and is transferable with the property.[43]

VIII. Statutes Affected:

This bill substantially amends section 193.624 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.

[43] Similarly, an existing constitutional provision authorizes the Legislature to prohibit a property appraiser from considering the value of a change or improvement that is "for the purpose of improving the property's resistance to wind damage." Although this constitutional provision has not yet been implemented, it is doubtful that it would be implemented in such a way as to require a property appraiser to take a property owner's word that any improvement qualifies for the exclusion from consideration. Instead, an implementing statute very likely would require evidence that the subject improvement qualifies not only as one done for the purpose of improving wind resistance but also as one that is within accepted industry standards as having the effect of improving wind resistance. And under such a statute, once this qualification was established, the benefit of exclusion would attach to the property and transfer with the property upon any conveyance.

By Senator Brandes

22-00982B-14 2014922__

A bill to be entitled

An act relating to renewable energy source devices; amending s. 193.624, F.S.; prohibiting consideration by a property appraiser of the increased value of real property due to the installation of a renewable energy source device by an end-use customer; revising the definition of the term "renewable energy source device"; providing for applicability; providing a contingent effective date.

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

Section 1. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of real ~~residential~~ property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment installed by an end-use customer that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits and that is primarily intended to offset part or all of that end-use customer's electricity demands:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

22-00982B-14 2014922__

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of real property ~~used for residential purposes~~, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

(3) This section applies to new and existing residential real property upon which ~~the installation of~~ a renewable energy source device was installed on or after January 1, 2013, and to all other real property as set forth in this section upon which such a device is installed on or after January 1, 2015 ~~to new and existing residential real property~~.

Section 2. The amendments made by this act to s. 193.624, Florida Statutes, apply to assessments beginning January 1, 2015.

Section 3. This act shall take effect January 1, 2015, if SJR ____, or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at

the general election to be held in November 2014 or at an earlier special election specifically authorized by law for that purpose.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/14
Meeting Date

Topic RENEWABLE ENERGY DEVICES Bill Number 922 *(if applicable)*

Name DAVID CULLEN Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 674 UNIVERSITY PKWY #286 Phone 941.323.2404
Street

SARASOTA FL 34243 E-mail CULLENSEC@AOL.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing SIERRA CLUB FLORIDA

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

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

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

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)

4 / 9 /2014
Meeting Date

Topic _____ Bill Number 922 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

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

4-9-14
Meeting Date

Topic SB 922 Renewable Energy

Bill Number SB 972 *(if applicable)*

Name Amy Datz

Amendment Barcode _____ *(if applicable)*

Job Title Retired Environmental Scientist

Address 1130 Crestview Ave
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 322-7599

E-mail amydatz@mac.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Democratic Environmental Caucus

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: April 4, 2014

I respectfully request that **Senate Bill #922**, relating to Renewable Energy Source Devices, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

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 414
INTRODUCER:	Education Committee and Senator Dean
SUBJECT:	Public Records/Animal Medical Researchers
DATE:	April 8, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha	ED	**Fav/CS**
2.	Kim	McVaney	GO	**Favorable**
3.	Letarte	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 414 provides an exemption from public record requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

The provision is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature. The bill also includes a public necessity statement as required by the Constitution of the State of Florida.

This bill requires a two-thirds vote for passage because it creates a public records exemption.

The bill takes effect on July 1, 2014.

II. Present Situation:

Currently, there is no exemption from public record requirements for personal identifying information of individuals who conduct animal research or engage in activities related to animal research at a public research facility.

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. 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 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 Act[4] guarantees every person's right to inspect and copy any state or local government public record[5] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6] The Sunshine Law[7] 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

[1] Fla. Const., art. I, s. 24(a).

[2] Id.

[3] Fla. Const., art. I, s. 24(b).

[4] Chapter 119, F.S.

[5] 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)).

[6] Section 119.07(1)(a), 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 (s*ee 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

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 provisions[11] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[12]

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]

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.).

[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?

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[18] A public necessity statement and a two-thirds vote for passage are not required 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[19] to the exemption is created.[20]

III. Effect of Proposed Changes:

CS/SB 414 provides an exemption from public record requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

The bill makes such personal identifying information exempt from public record requirements when it is contained in the following records:

- Animal records, including animal care and treatment records;
- Research protocols and approvals;
- Purchasing, funding, and billing records related to animal research or activities;
- Animal care and use committee records;
- Facility and laboratory records related to animal research or activities.

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

The public necessity statement provides that the exemption is necessary to protect researchers from physical and emotional harm from animal rights advocates who oppose the use of animals for medical research. The statement provides that certain university employees have been harassed and threatened after personal identifying information was disclosed pursuant to public records requests.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[18] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.
[19] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.
[20] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption and therefore requires a two-thirds vote for final passage.

Public Necessity Statement

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

Public research facilities will be required to redact personal identifying information in the future. The fiscal impact for this new requirement is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates a new unnumbered section 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 Education March 25, 2014:
The committee substitute:

- Broadens the exemption by protecting "personal identifying information" as opposed to just home addresses, telephone numbers, dates of birth, and photographs as in SB 414.
- Expands the group of people to whom the exemption applies by including individuals "employed by, under contract with, or volunteering for a public research facility," as opposed to "current or former researchers" as in SB 414.
- Expands the qualifying activity to include a research facility that "conducts animal research or is engaged in activities related to animal research" as opposed to requiring that the work be for the purpose of "conducting life-sustaining medical research" as in SB 414.
- Provides that personal identifying information is exempt from public records requirements when such information is located within a specific list of documents.

B. Amendments:

None.

By the Committee on Education; and Senator Dean

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for personal identifying information of certain animal researchers at public research facilities, including state universities; providing for retroactive applicability of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. (1) Personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research, is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, when such information is contained in the following records:

(a) Animal records, including animal care and treatment records.

(b) Research protocols and approvals.

(c) Purchasing, funding, and billing records related to animal research or activities.

(d) Animal care and use committee records.

(e) Facility and laboratory records related to animal research or activities.

(2) This exemption applies to personal identifying

information as described in subsection (1) held by a public research facility, including a state university, before, on, or after the effective date of this exemption.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, 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 personal identifying information of a person who is employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that this exemption apply to such personal identifying information held by a public research facility, including a state university, before, on, or after the effective date of the exemption. The Legislature finds that the release of such personal identifying information will place such persons in danger of threats and harassment as well as physical and emotional harm from those who advocate against such research. University employees have been harassed and threatened after animal care records that included their personal identifying information were disclosed pursuant to public records requests. Thus, the Legislature finds that the harm and threat to such persons' safety which results from the release of personal identifying information in records about the animals or about the animal research outweighs any public benefit that may be derived from the disclosure of the

information. The public research facilities, including state universities, remain responsible and accountable for the animal research conducted at their institutions.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic _____ Bill Number 414 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

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

4/9/14
Meeting Date

Topic Animal Research

Bill Number 414 *(if applicable)*

Name Pam Pfeifer

Amendment Barcode *(if applicable)*

Job Title VP Govt Affairs USF Health

Address 12901 Bruce B. Downs BLVD
Street

Tampa, FL 33612
City *State* *Zip*

Phone

E-mail

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.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

April 3, 2014

The Honorable John Thrasher
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher,

I respectfully request you place Committee Substitute for Senate Bill 414, relating to Public Records and Animal Medical Researchers, on your Rules Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: John B. Phelps, Staff Director

REPLY TO:
❒ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
❒ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
❒ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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 764
INTRODUCER:	Rules Committee; Judiciary Committee; and Senator Detert
SUBJECT:	Hearsay
DATE:	April 10, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Favorable**
3.	Brown	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 764 creates an exception to the general hearsay rule. The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.

Under the hearsay exception provided in the bill, an out-of-court statement is admissible if it is made by a victim of domestic violence and describes the act of domestic violence. The statement must be recorded, electronically or in writing, or made to enable law enforcement assistance to meet an ongoing emergency.

The proponent seeking to admit the statement into evidence must demonstrate that the statement has sufficient indicia of reliability as shown by:

- Whether the statement is corroborated by other evidence;
- The timing of the statement;
- Whether the victim gave the statement in response to leading questions; and
- The victim's subsequent statements.

The bill provides that a victim's recantation alone is insufficient reason to deny admission of a statement unless other factors indicate unreliability.

The statement is admissible regardless of whether the statement was made under oath or whether the person who made the statement is available as a witness in the judicial proceeding.

II. Present Situation:

The Hearsay Rule

The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.[1] The reasoning behind excluding hearsay statements in general is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including that the statement is not made under oath, jurors cannot observe the demeanor of the declarant and judge the witness' credibility, and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.

However, current law provides 24 separate hearsay exceptions where, based on the circumstances surrounding the statement, the law finds sufficient reliability to warrant a hearsay exception. For example, out-of-court statements made by children under 16 are admissible in certain instances.[2]

Courts note of particular importance the questioning of hearsay in criminal cases based on the constitutional right of the accused to cross-examine all witnesses appearing against him or her.[3]

Although hearsay evidence is generally inadmissible as evidence in a court hearing or trial, courts permit the admission of hearsay if the statement falls under a firmly-rooted exception in law. Courts consider these exceptions to possess a circumstantial guarantee of trustworthiness.[4]

Florida's evidence code groups hearsay exceptions together as non-hearsay, hearsay exceptions where the availability of the declarant is immaterial, and hearsay exceptions where the declarant is unavailable.

Non-hearsay (s. 90.801, F.S.)

Current law contains an exception to hearsay based on it not being hearsay.

A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination and the statement is:

- Inconsistent with the declarant's testimony and given under oath subject to perjury at a trial, hearing, or other proceedings or in a deposition;
- Consistent with the declarant's testimony and offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or

[1] Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.
[2] s. 90.803(23), F.S.
[3] The Confrontation Clause of the Sixth Amendment of the U.S. Constitution provides, in part "that in all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him." Section 16, Art. I, of the State Constitution, provides, in part "In all criminal prosecutions the accused … shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses … ." Indeed, "the right to confront one's accusers is a concept that dates back to Roman times." *Crawford v. Washington*, 541 U.S. 36, 43 (2004).
[4] 29 AM. JUR. 2D EVIDENCE S. 689

- A statement of identification of a person made after perceiving the person.[5]

Before Florida adopted the Evidence Code, prior inconsistent statements were inadmissible as substantive evidence. The 1978 Legislature based the provision of s. 90.801(2)(a), F.S., in part on Federal Rule of Evidence 801(d)(1), which requires a statement to have been given under oath, subject to perjury, at a trial, hearing, or deposition.[6]

Hearsay Exceptions Where the Availability of the Declarant is Immaterial (s. 90.803, F.S.)

This list of hearsay exceptions applies, regardless of whether the declarant is a witness.

Regardless of whether the declarant is available as a witness, current law includes the following statements as hearsay exceptions:

- Spontaneous Statement: A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when the statement is made under circumstances that indicate lack of trustworthiness.
- Excited Utterance: A statement relating to a startling event or condition made under the stress of excitement caused by the event or condition.
- Then-existing Mental, Emotional, or Physical Condition: A statement of then-existing state of mind, emotion, or physical sensation, when the state is an issue in the case.
- Statements for Purposes of Medical Diagnosis or Treatment: A statement that describes medical history, symptoms, pain or sensations reasonably pertinent to diagnosis or treatment.
- Recorded Recollection: A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection, shown to have been made when the matter was fresh.
- Records of Regularly Conducted Business Activity: A memorandum, report, record, or data compilation made at or near the time by a person with knowledge.
- Absence of Entry in Records of Regularly Conducted Activity: Evidence that a matter is not included in the memoranda, reports, records, or data compilation if the matter was of the kind regularly made and preserved.
- Public Records and Reports: Records, reports, statements reduced to writing, or data compilations, of public officers or agencies.
- Records of Vital Statistics: Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if a report was made to a public office pursuant to requirements of law.
- Absence of Public Record or Entry: Evidence, in the form of a certification in accord with s. 90.902, F.S., or in the form of testimony, that diligent search failed to disclose a record, report, statement, or data compilation or entry, when offered to prove the absence of the record, report, statement, or data compilation or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation would regularly have been made and preserved by a public office and agency.

[5] Section 90.801(2), F.S.
[6] FRE Rule 801, 28 U.S.C.A.; *Corbett v. Wilson*, 48 So.3d 131, 134 (5th DCA 2010); *State v. Green*, 667 So.2d 756, 758-759 (1995).

- Records of Religious Organizations: Statements of births, marriages, divorces, deaths, parentage, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in a regularly kept record of a religious organization.
- Marriage, Baptismal, and Similar Certificates: Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, when such statement was certified by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and when such certificate purports to have been issued at the time of the act or within a reasonable time thereafter.
- Family Records: Statements of fact concerning personal or family history in family Bibles, charts, engravings in rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.
- Records of Documents Affecting an Interest in Property: The record of a document purporting to establish or affect an interest in property, as proof of the contents of the original recorded or filed document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording or filing of the document in the office.
- Statements in Documents Affecting an Interest in Property: A statement contained in a document purporting to establish or affect an interest in property, if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.
- Statements in Ancient Documents: Statements in a document in existence 20 years or more, the authenticity of which is established.
- Market Reports, Commercial Publications: Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations if, in the opinion of the court, the sources of information and method of preparation were such as to justify their admission.
- Admissions: A statement that is offered against a party and that meets one of the 5 statutory criteria.
- Reputation Concerning Personal or Family History: Evidence of reputation concerning a person's birth, adoption, marriage, divorce, death, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.
- Reputation Concerning Boundaries or General History: Evidence of reputation in a community, arising before the controversy about the boundaries of, or customs affecting lands in, the community; or about events of general history which are important to the community, state, or nation where located.
- Reputation as to Character: Evidence of reputation of a person's character among associates or in the community.
- Former Testimony: Former testimony given by the declarant which testimony was given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, or a person with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination; provided, however, the court finds that the testimony is not inadmissible pursuant to s. 90.402 or s. 90.403, F.S.

- Statement of Child Victim: Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if certain statutory criteria are met which show sufficient safeguards of reliability.
- Statement of Elderly Person or Disabled Adult: Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by an elderly person or disabled adult, as defined in s. 825.101, F.S., describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant elderly person or disabled adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if certain statutory criteria are met which show sufficient safeguards of reliability.[7]

Hearsay Exceptions Where the Declarant is Unavailable (s. 90.804, F.S.)

Hearsay exceptions that apply when the declarant is unavailable[8] for a hearing or trial include:

- Statement of Former Testimony: Testimony given as a witness at another hearing of the same or different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding if the other party had an opportunity to develop the testimony through direct, cross, or redirect examination;
- Statement under Belief of Impending Death: A statement made by a declarant while reasonably believing death was imminent, regarding the cause of what the declarant believed to be impending death;
- Statement against Interest: A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or render invalid a claim by the declarant against another, that a declarant wouldn't have made the statement unless he or she believed it to be true.
- Statement of Personal or Family History: A statement about the declarant's birth, adoption, marriage, divorce, parentage, ancestry, or other similar fact, even though the declarant had no means of acquiring personal knowledge of the matter stated.
- Statement by Deceased or Ill Declarant Similar to One Previously Admitted: A statement by a deceased or ill declarant about the same subject matter as another statement made by the declarant that has previously been offered by an adverse party and admitted in evidence, in

[7] Section 90.803(1)-(24), F.S. Included in the statutory criteria for both the child victim and the elderly person or disabled adult exception is that if the victim is unavailable to testify, the proponent of the statement must introduce other corroborating evidence. Section 90.803(23) and (24), F.S.

[8] A witness is unavailable if he or she is exempted by a court ruling based on privilege; persists in refusing to testify concerning the subject matter of the declarant's statement despite a court order; has suffered a lack of memory of the subject matter of the statement so as to destroy the declarant's effectiveness as a witness during the trial; may not attend or testify at the hearing due to death or then-existing physical or mental infirmity; or is absent from the hearing, and the proponent of the statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means. Section 90.804(1), F.S.

an action brought against the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person; and

- Statement Offered Against a Party that Wrongfully Caused the Declarant's Unavailability: A statement offered against a party that wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

Hearsay within Hearsay

Hearsay within hearsay, also known as double hearsay, is not automatically inadmissible. Instead, these statements are admissible provided that they each and separately conform to a hearsay exception.[9]

Domestic Violence

Domestic violence usually takes place in private, where only the abuser and the abused are present. Because constitutional prohibitions preclude the prosecutor from compelling the accused to testify against himself or herself, the testimony of the victim becomes an essential element of the prosecution's case. The victim, however, is often unavailable because he or she has been killed, is unwilling to testify, or is otherwise unavailable. In these situations, a victim's hearsay statements can become the only opportunity for the prosecutor to bring in the victim's "voice" at trial.

III. Effect of Proposed Changes:

CS/CS/SB 764 creates an exception to the general hearsay rule. The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.

Under the hearsay exception provided in the bill, an out-of-court statement is admissible if it is made by a victim of domestic violence describing the act of domestic violence.[10] The statement must be recorded, electronically or in writing, or made to enable law enforcement assistance to meet an ongoing emergency.

The proponent seeking to admit the statement into evidence must demonstrate that the statement has sufficient indicia of reliability as shown by:

- Whether the statement is corroborated by other evidence;
- The timing of the statement;
- Whether the victim gave the statement in response to leading questions; and
- The victim's subsequent statements.

The bill provides that a victim's recantation alone is insufficient reason to deny admission of a statement unless other factors indicate unreliability.

[9] Section 90.805, F.S.
[10] The hearsay exception in the bill is based in part on Oregon Revised Statutes s. 40.460(26).

These statements are admissible regardless of whether the statement was made under oath or whether the person who made the statement is available as a witness in the judicial proceeding.

The bill may facilitate the investigation and prosecution of domestic violence cases under circumstances where the victim is unwilling or unable to follow through with the case.

The bill takes effect upon becoming a law.

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:

Confrontation Clause

The United States Supreme Court in *Crawford v. Washington* ruled as inadmissible out-of-court statements that are testimonial unless the declarant is unavailable and the defendant has had a prior opportunity to cross-examine the declarant.[11] Otherwise, admitting the statement is a violation of the confrontation clause of the Sixth Amendment of the U.S. Constitution.[12]

The Court described as testimonial "An accused who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not."[13]

The United States Supreme Court in *Davis v. Washington* refined the holding of the *Crawford* Court to clarify that victim statements made during a 911 call are not testimonial, and are made for the purpose of enabling police assistance to meet an ongoing emergency.[14] Therefore, these statements are admissible provided that they constitute a hearsay exception in law.[15]

---

[11] *Crawford v. Washington*, 541 U.S. 36, 68 (2004). In *Crawford*, an assault and attempted murder case, the Court admitted a statement tape-recorded by the police from a person who allegedly witnessed a stabbing. The witness did not testify at trial, nor was there opportunity for the defendant to cross-examine the witness. *Id*. at 38.
[12] *Id*. at 68.
[13] *Id*. at 51.
[14] *Davis v. Washington*, 547 U.S. 813, 829 (2006).
[15] *Vanevery v. State*, 980 so.2d 1105, 1107 (Fla. 4TH DCA 2008), subsequently cited *Davis* for the proposition that a 911 transcript of a victim of domestic violence is not testimonial and is admissible if it meets an exception to the hearsay rule.

The bill creates a new hearsay exception for statements made by victims about domestic violence to enable law enforcement assistance in responding to an ongoing emergency. As the statements are in and of themselves a hearsay exception, the statements would not have to meet a separate, firmly-rooted hearsay exception to be admissible as evidence.

Traditionally, hearsay exceptions allow the admission of statements that bear pervasive assurances of trustworthiness. The admission of out-of-court statements that do not bear indications of trustworthiness could be challenged on the basis that the admission of the statement denies a defendant the constitutional due process right to a fair trial.

By way of analogy, two hearsay exceptions in Florida law allow as admissible statements of child victims and elderly persons or disabled adults, regardless of whether the declarant is available to testify.[16] Still, each exception requires additional safeguards prior to admissibility. For both of these limited exceptions, the law requires other guarantees of trustworthiness in the form of:

- A hearing conducted outside the presence of the jury to establish that the time, content, and circumstances in which the statement is made provide sufficient safeguards of reliability; and
- The child or elderly or disabled adult either testifies or is unavailable as a witness, and if the declarant is unavailable, the proponent of the statement offers other evidence corroborating the abuse or offense.[17]

Although the bill provides that its hearsay exception applies regardless of whether a declarant testifies, the Confrontation Clause of the U.S. Constitution appears to limit the admissibility of hearsay when the declarant does not testify at trial. In *Oregon v. Haggblom*, which involved the Oregon statute on which the bill in part is based, the trial court admitted into evidence a recorded statement by a victim of domestic violence.[18] The victim did not testify at trial and was never cross examined about her statement.

On appeal, the State of Oregon conceded and the appellate court agreed that the admission of the recorded statement violated the defendant's constitutional right to confront witnesses against him and that the victim's recorded statement should not have been admitted.[19] However, the state argued that the admission of the statement was harmless. The appellate court decided that it could not conclude that the "admission of the recording . . . was harmless beyond a reasonable doubt" and reversed the defendant's conviction.[20]

---

[16] Section 90.803(23), F.S., provides a hearsay exception where the availability of the declarant is immaterial for child victims under the actual or mental age of 16, and the statement describes any act of child abuse or neglect, sexual abuse, or unlawful sexual acts performed in the presence of the child in civil or criminal proceedings. Section 90.803(24), F.S., allows as admissible statements by an elderly person or disabled adult describing acts of abuse or neglect, exploitation, battery or aggravated battery, assault or aggravated assault, sexual battery, or any other violent act.
[17] Sections 90.803(23)(a) and 90.803(24)(a), F.S.
[18] *Oregon v. Haggblom*, 208 P.3d 1033 (Or. Ct. App. 2009).
[19] *Id.* at 1035.
[20] *Id.* at 1036.

Separation of Powers

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.[21] The case law interpreting Article V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Article V, s. 2.[22] On the other hand, legislation concerning matters of practice and procedure, are within the Court's "exclusive authority to regulate."[23] However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."[24]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the fiscal impact on expenditures cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload. The Office of the State Courts Administrator (OSCA) specifically noted an impact as follows:

> Likely having a proportionately greater impact in relation to criminal matters, one might anticipate prosecutors will bring more cases to trial. This may be especially true of domestic violence and gang-related matters in which it is common for victim statements to change before trial.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

---

[21] Article V, s. 2(a), Fla. Const.
[22] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So.2d 730, 732 (Fla. 1991).
[23] *Id*.
[24] *In re Commitment of Cartwright*, 870 So.2d 152, 158 (Fla. 2d DCA 2004) (citing *Caple v. Tuttle's Design-Build, Inc*., 753 So.2d 49, 53-54 (Fla. 2000)).
[25] Office of the State Courts Administrator, *2014 Judicial Impact Statement SB 764* (February 10, 2014) (on file with the Senate Judiciary Committee).

VIII. Statutes Affected:

This bill substantially amends section 90.801 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 Rules on April 9, 2014:
The CS/CS requires the declarant of the statement to be the victim of domestic violence. The statement must be made to a law enforcement officer to enable the law enforcement agency to respond to an ongoing emergency and must be recorded electronically or in writing.

The proponent seeking to admit the statement into evidence must demonstrate that the statement has sufficient indicia of reliability as shown by:

- Whether the statement is corroborated by other evidence;
- The timing of the statement;
- Whether the victim gave the statement in response to leading questions; and
- The victim's subsequent statements.

The bill provides that a victim's recantation alone is insufficient reason to deny admission of a statement unless other factors indicate unreliability.

CS by Judiciary on March 18, 2014:
The underlying bill created a hearsay exception that would have made admissible as evidence any inconsistent statement made by a person who testifies at trial. The committee substitute replaces the broad hearsay exception in the bill with an exception that is limited to certain statements describing acts of domestic violence.

B. Amendments:

None.

387314

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Smith) recommended the following:

Senate Amendment

Delete lines 15 - 18
and insert:
(25) HEARSAY EXCEPTION; STATEMENT OF DOMESTIC VIOLENCE VICTIM.—
(a) A statement that purports to narrate, describe, report, or explain an act of domestic violence as defined in s. 741.28 made by a victim of the domestic violence if the statement was recorded electronically or in writing, was made to a law enforcement officer to enable the law enforcement agency to

387314

respond to an ongoing emergency, and has sufficient indicia of reliability.

(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a), the court shall consider all circumstances surrounding the statement, including, but not limited to:

1. Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection;

2. The timing of the statement;

3. Whether the statement was elicited by leading questions; and

4. Subsequent statements made by the victim.

654744

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Smith) recommended the following:

Senate Substitute for Amendment (387314)

Delete lines 15 - 18
and insert:
(25) HEARSAY EXCEPTION; STATEMENT OF DOMESTIC VIOLENCE VICTIM.—
(a) A statement that purports to narrate, describe, report, or explain an act of domestic violence as defined in s. 741.28 made by a victim of the domestic violence if the statement was recorded electronically or in writing, was made to a law enforcement officer to enable the law enforcement agency to

654744

respond to an ongoing emergency, and has sufficient indicia of reliability.

(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a), the court shall consider all circumstances surrounding the statement, including, but not limited to:

1. Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection;

2. The timing of the statement;

3. Whether the statement was elicited by leading questions; and

4. Subsequent statements made by the victim. The victim's reaction alone is not sufficient reason for denying admission of a statement under this subsection unless there are other factors also indicating unreliability.

732958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Smith) recommended the following:

Senate Substitute for Amendment (387314)

Delete lines 15 - 18
and insert:
(25) HEARSAY EXCEPTION; STATEMENT OF DOMESTIC VIOLENCE VICTIM.—
(a) A statement that purports to narrate, describe, report, or explain an act of domestic violence as defined in s. 741.28 made by a victim of the domestic violence if the statement was recorded electronically or in writing, was made to a law enforcement officer to enable the law enforcement agency to

732958

respond to an ongoing emergency, and has sufficient indicia of reliability.

(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a), the court shall consider all circumstances surrounding the statement, including, but not limited to:

1. Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection;

2. The timing of the statement;

3. Whether the statement was elicited by leading questions; and

4. Subsequent statements made by the victim. The victim's recantation alone is not sufficient reason for denying admission of a statement under this subsection unless there are other factors also indicating unreliability.

676158

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment to Amendment (732958)

Delete line 10
and insert:
recorded electronically or in writing, or was made to a law

By the Committee on Judiciary; and Senator Detert

590-02748-14 2014764c1

A bill to be entitled

An act relating to hearsay; amending s. 90.803, F.S.; providing that certain statements are an exception to the hearsay rule and thus admissible; providing an effective date.

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

Section 1. Subsection (25) is added to section 90.803, Florida Statutes, to read:

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(25) DOMESTIC VIOLENCE.—A statement describing any act of domestic violence, as such is defined in s. 741.28, that was made to enable law enforcement assistance to meet an ongoing emergency.

Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 9, 2014
Meeting Date

Topic Hearsay Exceptions — Bill Number 764 *(if applicable)*

Name Nancy Daniels — Amendment Barcode 732958 *(if applicable)*

Job Title Public Defenders, 2nd Circuit

Address 301 South Monroe Street *Street* — Phone 850.606.1000

Tallahassee *City* — Florida *State* — 32301 *Zip* — E-mail nancy.daniels@flpd2.com

Speaking: ☑ For ☑ Against ☐ Information

Representing Florida Public Defender Association, Inc.

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)

4/9/14
Meeting Date

Topic Hearsay Evidence — Bill Number SB 764 *(if applicable)*

Name Buddy Jacobs — Amendment Barcode 732958 *(if applicable)*

Job Title General Counsel Fla. Prosecuting Attys Assoc.

Address 961687 Gateway Blvd. *Street* — Phone 904 261-3693

Fernandina Bch *City* FL *State* 32034 *Zip* — E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing The State Attorneys of Fla.

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)

4/9/2014
Meeting Date

Topic _____ Bill Number 764 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

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

April 9, 2014
Meeting Date

Topic Hearsay Exceptions — Bill Number 764 *(if applicable)*

Name Nancy Daniels — Amendment Barcode _____ *(if applicable)*

Job Title Public Defenders, 2nd Circuit

Address 301 South Monroe Street *Street* — Phone 850.606.1000

Tallahassee *City* Florida *State* 32301 *Zip* — E-mail nancy.daniels@flpd2.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Public Defender Association, Inc.

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 1318
INTRODUCER:	Community Affairs Committee and Senator Evers
SUBJECT:	Public Records/Public-private Partnerships
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Fav/CS**
2.	Kim	McVaney	GO	**Favorable**
3.	Stearns	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1318 creates public records and public meetings exemptions for materials related to unsolicited proposals and held by a responsible public entity. The bill provides conditions under which the public records exemption will terminate.

The bill provides a definition of "proprietary confidential business information."

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

The bill provides statements of public necessity for the exemptions.

II. Present Situation:

Public Access

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records and public meetings to a constitutional level.

Paragraph (a) and (b) of Section 24, Art. I of the State Constitution provide the following:

> (a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, 0officer, 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.
>
> (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Public-Private Partnerships and the Unsolicited Proposal Procurement Model

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.[1] Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.[2] In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.[3]

Chapter 287, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. Section 287.05712, F.S., authorizes responsible public entities[4] to enter

[1] *See* The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, *available at*: http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited on March 8, 2014).
[2] *See generally* The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: http://www.ncppp.org/ppp-basics/7-keys/ (last visited on March 8, 2014).
[3] *Id.*
[4] Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

into P3s for specified qualifying projects[5] if the public entity determines the project is in the public's best interest.[6]

There are different types of PPPs with varying levels of private sector involvement, one of which is the Unsolicited Proposal Procurement Model (UPPM). The UPPM allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.[7] Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.[8] A local government's "acceptance" of a proposal results in the publishing of a notice to other prospective proposers for the project.[9] These other proposers have a certain amount of time in which to submit a competing proposal, after which the local government considers and ranks all of the proposals, including the initial proposal that began the process.[10]

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:[11]

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

[5] Section 287.05712(1)(i), F.S., defines "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.
[6] Section 287.05712(5), F.S.
[7] *See Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 2.
[8] *Id.*
[9] Section 287.05712(4)(b), F.S.
[10] Section 287.05712(4)(b) and (6)(c), F.S.
[11] Section 287.05712(5), F.S.

The UPPM allows local governments to engage in a PPP without incurring the costs associated with preparation of detailed proposal solicitation documents.[12] Use of the UPPM results in a faster review and procurement process while still allowing for the receipt of competitive project proposals.

Public Record Exemption for Records Related to a Competitive Solicitation

Only the Legislature may create an exemption to public records requirements.[13] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[14] 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 provisions[15] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[16]

Current law does not provide a public record exemption for unsolicited proposals submitted to responsible public entities. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt[17] from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.[18] If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.[19]

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new

[12] Fumero at 2.
[13] 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 (s*ee 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).
[14] FLA. CONST., art. I, s. 24(c).
[15] The bill may, however, contain multiple exemptions that relate to one subject.
[16] FLA. CONST., art. I, s. 24(c).
[17] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).
[18] Section 119.071(1)(b), F.S.
[19] *Id.*

exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

III. Effect of Proposed Changes:

Section 1 makes an unsolicited proposal received by a responsible public entity confidential and exempt from the public records laws until that responsible public entity receives, opens, and ranks the proposals and provides notice of its intended decision. The bill states that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals or the date of receipt of a proposal for a project the responsible public entity does not intend to accept.

The bill provides a definition for "proprietary confidential business information" (PCBI). If an unsolicited proposal contains information designated as PCBI by the private entity submitting the unsolicited proposal, that information shall remain confidential and exempt indefinitely.

The bill states that portions of public meetings of a responsible public entity at which information related to an unsolicited proposal is discussed are confidential and exempt from the public meetings laws. The bill requires exempt portions of meetings to be recorded and transcribed. Portions of public meetings which reveal PCBI are confidential and exempt.

The bill states that the subsection is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

Section 2 of the bill provides statements of public necessity for the public records and public meetings exemptions.

Section 3 provides an effective date of July 1, 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 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 both a public record exemption and a public meetings exemption for materials related to an unsolicited proposal; 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 both a public record exemption and a public meetings exemption for records related to an unsolicited proposal; thus, it includes public necessity statements.

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 creates a public record exemption limited to the records related to an unsolicited proposal. Furthermore, the bill restricts the timeframe of the exemption to that period most likely to be damaging (and therefore most discouraging) to a private party that might otherwise submit an unsolicited proposal.

The bill also creates a public meetings exemption for portions of a public meeting related to an unsolicited proposal that is confidential and exempt. The exemption only applies to those portions of meetings that are necessary to preserve the confidentiality of the information. Furthermore, the bill requires such portions to be transcribed and recorded, including the times of commencement and termination of the meeting and the names of all persons speaking.

As such, the exemptions do not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill exempts records and meetings related to unsolicited proposals to engage in a PPP, which may encourage more private parties to enter into such agreements.

C. Government Sector Impact:

The bill may encourage the formation of more PPPs. One of the primary advantages of PPPs is their tendency to encourage a reduction in the costs of project implementation. Therefore, the bill may reduce the financial burden on the state and local governments.

VI. Technical Deficiencies:

The definition of "proprietary confidential business information" includes information that is "intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the entity, and has not otherwise been intentionally disclosed." This standard is subjective in that it relies on the intent and actions of the private entity. It is unclear how a records custodian will be able to discern what records could be released.

This bill may be overly broad in that it states that information "that concerns" several categories of records are proprietary confidential business information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.05712 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 Community Affairs on March 19, 2014:

- Defines "proprietary confidential business information" (PCBI).
- Provides that an unsolicited proposal is confidential and exempt until the responsible public entity receives, opens, and ranks the proposals and provides notice of its intended decision.
- Provides that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals or the date of receipt of a proposal for a project which the responsible public entity does not intend to enter into an agreement for. However, if the proposal contains information designated as PCBI by the private party, then that information will remain confidential and exempt indefinitely.
- Provides that portions of meetings at which the information from an unsolicited proposal is discussed are exempt from the public meetings law.
- Provides that the exempt portions of public meetings will nonetheless be transcribed.
- Provides that a portion of a transcript that reveals PCBI is confidential and exempt.
- Provides that the subsection is subject to the OGSR.
- Provides statements of public necessity.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Evers

578-02840-14 20141318c1

A bill to be entitled

An act relating to public records and meetings; amending s. 287.05712, F.S.; defining the term "proprietary confidential business information"; creating an exemption from public records requirements for unsolicited proposals for a qualifying public-private project received by a responsible public entity for a specified period; providing that proprietary confidential business information in an unsolicited proposal remains confidential and exempt from public records requirements; creating an exemption from public meetings requirements for portions of meetings at which confidential and exempt information is discussed; requiring a recording to be made of a closed portion of a meeting; providing for future repeal and legislative review of the exemptions; providing statements of public necessity; providing an effective date.

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

Section 1. Subsection (16) is added to section 287.05712, Florida Statutes, to read:

287.05712 Public-private partnerships; public records and public meetings exemptions.—

(16) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "proprietary confidential business information" means information that has been designated by a private entity when provided to a

578-02840-14 20141318c1

responsible public entity as information that is owned or controlled by the private entity, is intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the private entity, has not otherwise been intentionally disclosed by the private entity, and is information concerning:

1. Trade secrets as defined in s. 688.002;

2. Financial statements or financing terms;

3. Patent-pending or copyrighted designs;

4. Leasing or real property acquisition plans; or

5. Marketing studies.

(b)1. An unsolicited proposal received by a responsible public entity is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time that the responsible public entity receives, opens, and ranks the proposals as set forth in paragraph (6)(c) and provides notice of its intended decision.

2. An unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals submitted as provided in paragraph (6)(c) or the date of receipt of a proposal for a project which the responsible public entity does not intend to enter into an agreement for. If the unsolicited proposal contains information designated by the private entity as proprietary confidential business information, such information shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c)1. A portion of a meeting of a responsible public entity at which information that is confidential and exempt under

paragraph (b) is discussed, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. An exempt portion of a meeting shall be recorded and transcribed. The responsible public entity shall record the times of commencement and termination of the meeting, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of a meeting may not be off the record.

3. A portion of the transcript of a meeting which reveals proprietary confidential business information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. II of the State Constitution.

(d) 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. (1) The Legislature finds that it is a public necessity that an unsolicited proposal held by a responsible public entity pursuant to s. 287.05712, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until such time that the responsible public entity receives, opens, and ranks the proposals set forth in s. 287.05712(6)(c), Florida Statutes, or, if the responsible public entity rejects all proposals or decides not to enter into an agreement, no more than 90 days after such decision. The disclosure of information in an unsolicited proposal, such as financing mechanisms and terms, formulas, and designs, could give competitors an unfair business advantage by publicizing the proposal's financial

strategy and innovative plans, thereby injuring the private entity that submitted the unsolicited proposal and placing the private entity at a competitive disadvantage in the marketplace. Without the exemption, private entities might not submit unsolicited proposals that could provide timely and cost-effective solutions for qualifying projects that serve a public need. The exemption is narrowly drawn in that only proprietary confidential business information in an unsolicited proposal will remain confidential and exempt if such information has not otherwise been made available by a private entity. Therefore, the Legislature finds that the harm that may result from the release of such information outweighs any public benefit that may be derived from disclosure of such the information.

(2) The Legislature further finds that, in order to maintain the confidential and exempt status of this information, it is a public necessity that a portion of a meeting of a responsible public entity at which information made confidential and exempt from public records requirements under this act is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. Public oversight is preserved by requiring a transcript of any portion of such closed meetings of a responsible public entity.

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)

4/9/14
Meeting Date

Topic Public Private Partnership Public Records — Bill Number 1318 *(if applicable)*

Name Richard Watson — Amendment Barcode _____ *(if applicable)*

Job Title Legislative Counsel

Address P.O. Box 10035 — Phone 850 222 0000
Street

Tallahassee, FL 32302 — E-mail rick@rwatsonandassociates.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Builders & Contractors of FL

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:
Criminal Justice, *Chair*
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic Security
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG EVERS
2nd District

April 3, 2014

Honorable Senator Thrasher
Senate Rules Committee
400 SOB
404 S. Monroe St.
Tallahassee, FL 32399

RE: SB 1318

Dear Chairman Thrasher:

Please allow this letter to serve as my respectful request to include SB 1318 regarding Public Records on the agenda for your next Rules Committee meeting.

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

Sincerely,

Greg Evers
State Senator, District 2

REPLY TO:
☐ 209 East Zaragoza Street, Pensacola, Florida 32502-6048 (850) 595-0213 FAX: (888) 263-0013
☐ 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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 386
INTRODUCER:	Senator Hays
SUBJECT:	Application of Foreign Law in Certain Cases
DATE:	April 8, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.	McVaney	McVaney	GO	**Favorable**
3.	Brown	Phelps	RC	**Favorable**

I. Summary:

SB 386 restricts courts and arbitration tribunals from applying foreign law, legal codes, and systems to disputes brought under chapters 61 and 88, F.S. These chapters relate to divorce, alimony, division of marital assets, child support, and child custody.

The bill restricts courts from applying foreign laws that do not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

Specifically, the bill prohibits the courts of this state from:

- Basing a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforcing a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforcing a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Granting a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

The bill authorizes a party to a contract to waive his or her rights, but requires the court to narrowly construe the scope of a waiver.

This bill does not apply to the following:

- Corporations, partnerships, and other types of business associations, unless chapters 61 or 88, F.S., govern the dispute;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which preempt state law.

II. Present Situation:

Choice of Law and Choice of Forum

Questions of choice of law or forum generally arise when a case involves parties or situations with connections to multiple states or countries.

Domestic Law

The Full Faith and Credit Clause, found in section 1, Article IV of the U.S. Constitution, provides, in part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The question of full faith and credit may arise after a state refuses to enforce another state's judgment, considered to be a "sister state."[1] A full faith and credit issue may also arise when a party to a case involving contacts in one state seeks to have the law of another state apply.

In choice of law cases, a court typically requires proof of sufficient contacts to a state, such as through residency, home ownership, or place of work to apply the law of that state. This test remains the prevailing standard in choice of law cases.[2]

Foreign Law

Choice of Law

Some contracts stipulate a choice of law, defined as "A contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties."[3]

Numerous policies exist which favor application of foreign law by U.S. state and federal courts.[4] These policies are based on principles of international comity, reciprocity,

---

[1] William B. Sohn, *Supreme Court Review of Misconstructions of Sister State Law*, 98 VA. L. REV. 1861, 1864-65 (December 2012).

[2] In the seminal case of *Allstate Insurance Co. v. Hague*, the Supreme Court considered whether Minnesota law could apply where the widow established the following state ties to Minnesota: the decedent's long-term workplace, a daily commute between states, the insurer's place of operation, and the wife's new place of residency. The Court required proof of a singular or aggregate significant contact to a state so that choice of its law is not arbitrary or fundamentally unfair. Here, the court determined that the aggregate of contacts justified application of Minnesota law. 449 U.S. 302, 313-319 (1981).

[3] BLACK'S LAW DICTIONARY (9th ed. 2009).

[4] Nicholas M. McLean, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 YALE L.J. 303, 304 (October 2012). "A court sitting in diversity might apply a state choice-of-law rule that requires the court to apply the tort law of a foreign nation. In a contract dispute, a federal court might apply foreign substantive law pursuant to an international

predictability, fairness, and disapproval of forum shopping.[5] The term "comity" is defined as "A practice among political entities (as nations, states, or courts of different jurisdictions), involving esp[ecially] mutual recognition of legislative, executive, and judicial acts."[6] Principles of comity are the international equivalent of full faith and credit.[7]

A court does not take judicial notice of the law of another country.[8] Instead, if relevant to a case, a court reviews foreign statutes, case law, and secondary sources and heavily relies on expert testimony.[9]

Forum Non Conveniens

The term "forum non conveniens" is defined as:

> The doctrine that an appropriate forum – even though competent under the law – may divest itself of jurisdiction if, for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might also have been properly brought in the first place.[10]

Courts apply a strong presumption in favor of a plaintiff's choice of forum.[11] Still, the proponent must firmly establish bona fide connections to the forum choice to outweigh perceptions of forum shopping.[12] Courts typically allow a U.S. citizen to choose a U.S. forum, rather than have the case heard in a foreign jurisdiction. However, if a U.S. corporation operates in international commerce, not all litigation will be heard in the U.S.[13]

Courts place a high burden on a defendant who seeks dismissal of a case based on forum non conveniens. Although international treaty requirements promote the principle "equal access to courts," in practice, courts do not accord foreign plaintiffs the same deference to move a case to another jurisdiction as U.S. citizens.[14]

---

agreement's choice-of-law clause. In the realm of corporate law, a court might find, based on an application of the internal affairs doctrine, that a foreign nation's procedural requirements govern a shareholder derivative suit (citation omitted)." *Id*.

[5] *Id*. at 304.

[6] BLACK'S LAW DICTIONARY (9th ed. 2009).

[7] James Botsford and Paul Stenzel, *The Wisconsin Way Forward with Comity: A Legal Term for Respect*, 47 TULSA L. REV. 659 (Spring 2012). "Full faith and credit is a constitutional principle requiring states to enforce fully the judgments and orders of other states. Comity is the principle of international law by which a sovereign gives deference to the judgments of another due to mutual respect." *Id*. at 660.

[8] Determination of question relating to foreign law as one of law or fact, 34 A.L.R. 1447.

[9] McLean, *supra* note 4, at 306-307.

[10] BLACK'S LAW DICTIONARY (9th ed. 2009).

[11] Plaintiff's choice of forum, 32A AM. JUR. 2D FED. CTS. § 1364.

[12] Forum Non Conveniens – Deference to Plaintiff's Forum Choice, 14D FED. PRAC. & PROC. JURIS. § 3828.2 (3d ed.)

[13] American citizenship of party; suits by aliens, 32A AM. JUR. 2D FED. CTS. §1365.

[14] 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.).

Validity of Judgment

U.S. courts are generally not bound by foreign judgments. Still, principles of comity dictate strong consideration of another country's judicial orders, based on deference and mutual respect. Criteria that courts apply in accepting a foreign judgment include proof that:

- The parties had access to a full and fair trial.
- The proceeding took place after due notice and voluntary appearance.
- The jurisdiction operates under impartiality, rather than prejudice, between its own citizens and those of other countries.
- No evidence of fraud existed in securing the judgment.[15]

Chapter 61, F.S.

Chapter 61, F.S., addresses dissolution of marriage including distribution of assets and liabilities, alimony, and child support and custody arrangements. Regarding child support, the public policy of the state is that each parent has a fundamental obligation towards dependent children.[16] Child support is based in part on a parent's income and the child's needs.[17] Child custody arrangements, whether developed by the parents or by a court, must comply with state law and international treaties.[18]

Florida courts distribute assets and liabilities through equitable distribution, rather than, for example, community property, as is done in California and a handful of other Western states. Under equitable distribution, a court considers various factors including contributions to the marriage, economic circumstances of the parties, and the length of marriage.[19] The court also considers various factors in awarding alimony and awards it on different bases such as monthly, lump sum, temporary, or permanent.[20]

Florida recognizes written, signed premarital agreements as enforceable contracts.[21] These agreements may include choice of law clauses.[22] An agreement cannot negatively affect the rights of a child to support.[23] Grounds for unenforceability of a premarital agreement include coercion, fraud, duress, or overreaching or that the agreement is unconscionable.[24]

To relocate with a child, absent an agreement between the parents, the relocating parent must petition the court or face contempt charges.[25]

---

[15] 9 AM. JUR. *Proof of Facts* 3D 687 §1.5. Comity (December 2012).
[16] Section 61.29, F.S.
[17] Section 61.30, F.S.
[18] These laws include the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction.
[19] Section 61.075(1), F.S.
[20] The law recognizes bridge-the-gap, rehabilitative, durational, and permanent forms of alimony. Section 61.08(1) and (2), F.S.
[21] Section 61.079, F.S.
[22] Section 61.079(4)(a)7., F.S.
[23] Section 61.079(4) (b), F.S.
[24] Section 61.079(7), F.S.
[25] Section 61.13001(3), F.S.

Chapter 88, F.S.

Federal law required each state to adopt the Uniform Interstate Family Support Act (UIFSA), codified in chapter 88, F.S.[26] The purpose of the UIFSA is to unify state law among the states regarding child support obligations, reconcile child support orders issued by multiple states, and streamline procedures for out-of-state petitioners.[27] Under the Act, only one court possesses jurisdiction and only one order is in effect at any given time.[28] This can change, however, to another court for modification, if that court has personal jurisdiction.[29]

The UIFSA applies to support proceedings involving a foreign support order (meaning an order entered into out-of-state), a foreign tribunal, or a case in which an obligee, obligor, or child lives in a foreign country.[30]

The UIFSA governs the:
- Establishment of a spousal or child support order.
- Enforcement of support orders and income-withholding orders without the registration of an order from out-of-state with a court in this state.
- Registration of a support order of another state for enforcement in this state.
- Modification of a child support order issued by a court of the state in which the support obligations originated.
- Registration of an order of another state for modification.
- Determination of parentage as it relates to child support.[31]

Jurisdiction

Section 88.2011, F.S., addresses a court's jurisdiction over parties to a support order or parentage determination. When a court exercises personal jurisdiction over a nonresident, in some circumstances, the state procedural and substantive laws apply, including choice of law rules, unless specified otherwise in the UIFSA:

---

[26] Building on earlier federal efforts to address the complications of enforcing child support across state lines, Congress passed the original UIFSA in 1992, and later amended it in 1996 and 2001. Kimball Denton, *A Brief History of Uniform Laws for Private Interstate Support Enforcement*, 20 J. CONTEMP. LEGAL ISSUES 323, 326 (2011-12). "[T]he Act innovatively created a one-order system by including a long-arm jurisdiction provision, which provided that a case should be kept in the obligee's home state as often as possible. The long-arm provision called for 'extended personal jurisdiction over nonresidents'… ." This was thought to remove the noncustodial parent's advantage of having automatic case transfer to his or her home state. Nicole K. Bridges, *The "Strengthen and Vitalize Enforcement of Child Support (Save Child Support) Act: Can the Save Child Support Act Save Child Support from the Recent Economic Downturn?,"* 36 OKLA. CITY U.L. REV. 679, 692-93 (Fall 2011).

[27] Denton, *supra* note 26 at 326-328.

[28] Denton, *supra* note 26 at 327.

[29] *Id*. at 327. In Florida, a court may establish personal jurisdiction over an individual based on any of the following: The individual is served with citation, summons, or notice in-state; the individual consents to jurisdiction in the state; the individual lived with the child in-state and provided prenatal expenses or child support; the child lives in the state as a result of the acts or directives of the individual; the individual had sexual intercourse in this state which may have resulted in the conception of the child; the individual asserted parentage in a court or putative father registry in the state; or any other basis which is constitutional for the exercise of personal jurisdiction. Section 88.2011, F.S.

[30] Section 88.1041(1), F.S.

[31] 23 AM. JUR. 2D *Desertion and Nonsupport* § 74.

> Under … choice of law … the substantive law of an issuing state applies to petitions filed in a responding state to enforce the existing … orders of the issuing state; … the substantive law of the issuing state does not apply to petitions filed in a [subsequent] responding state to modify the existing child support orders of the issuing state.
>
> A foreign country may be a "state" for purposes of application of the UIFSA, but the Act does not apply to obligations established under the law of a foreign country where there is no state law or contravening treaty or federal statute recognizing the enforcement of support orders from the foreign country … .[32]

Enforcement of Income-Withholding Orders Without Registration

Part V of chapter 88, F.S., provides for income-withholding orders issued by another state to be self-executing and treated as if a Florida court issued them.[33] However, a Florida court can enforce out-of-state support and income-withholding orders once a party registers the order with the Florida court.[34]

Choice of Law

Under the UIFSA, the law of the issuing or originating state applies regarding the nature, extent, amount and duration of payments and other support obligations, including arrearages. In proceedings to collect arrearages under support orders, the statute of limitation that applies is whichever is longer, this state's or the issuing state's.[35]

Enforcement and Modification of Support Order After Registration

Under the UIFSA, jurisdiction to enforce or modify another state's child support order in a registration proceeding in this state is proper if all parties, including children, reside here.[36] To modify a support order from another state, an agency or party must register it in Florida.[37] Once the recipient meets personal jurisdiction and other factors, the court can enforce the order just as if it had been issued in-state.[38]

To enforce orders involving a foreign country, the UIFSA authorizes:

- A tribunal of this state to assume jurisdiction to modify an order and make it the controlling order if a foreign country lacks or refuses jurisdiction to modify its own order.[39]
- A party or support enforcement agency seeking to modify or enforce a foreign order which is not governed by an international convention to register the order in this state.[40]

---

[32] Section 88.2021, F.S.; 67A C.J.S. *Parent and Child* § 267.
[33] Sections 88.5011 and 88.50211(2), F.S.
[34] Section 88.6011, F.S.
[35] Section 88.6041(1) and (2), F.S.
[36] Section 88.6131(1), F.S.
[37] Section 88.6091, F.S.
[38] Section 88.6101, F.S.; Requirements for modification of child support orders issued out-of-state are provided in s. 88.6111, F.S.
[39] Section 88.6151(1) and (2), F.S.
[40] Section 88.6161, F.S.

The UIFSA requires courts to recognize and enforce foreign support orders and agreements, unless:

- A court finds that a registered convention support order is manifestly incompatible with public policy. Incompatibility with public policy includes the failure of the issuing court to maintain minimum standards of due process such as notice and an opportunity to be heard.[41]
- A court finds that a registered foreign support agreement is manifestly incompatible with public policy."[42]

Use and Acceptance of Religious Law by U.S. Courts

The U.S. Constitution does not permit official adoption of religious law by federal, state, or local governments.[43] Examples exist, however, of judicial deference to religious edicts.

In the seminal case of *Wisconsin v. Yoder*, the U.S. Supreme Court reviewed a challenge by Amish parents of a Wisconsin law requiring mandatory school attendance.[44] At the time, the law did not recognize home schooling as alternative education. The parents asserted that high school would negatively impact their children through exposure to "worldly" views, self-distinction, and social life, all antithetical to Amish religion.[45] The Court noted the reputable work ethic, law-abiding nature, and potentially-compromised survival of the Amish.[46] The Court found the parents' violation of compulsory school attendance firmly rooted in Amish religion.[47] Requiring high school attendance would violate the defendants' rights to religious Free Exercise, under the First Amendment of the U.S. Constitution.[48]

Scholars suggest that the Court is inclined to uphold a religious practice that violates a law if the statute unduly burdens religious First Amendment rights. This is particularly so where the practice cannot be said to harm others.[49] Still, "American laws impose behavioral mandates on all citizens, regardless of faith, and to the extent that religious regimes tolerate behaviors that fall outside those mandates, the secular court system will always come down on the side of secular laws."[50]

Another group that the Court recognizes is the Beth Din of America (BDA), or a Jewish rabbinic court. The BDA established itself as a limited court alternative to civil

[41] Section 88.7081(1) and (2)(a), F.S.
[42] Section 88.7101(3), F.S.
[43] Jaron Ballou, *Sooners vs. Shari'a: The Constitutional and Societal Problems Raised by the Oklahoma State Ban on Islamic Shari'a Law*, 30 LAW & INEQ. 309, 314 (Summer 2012).
[44] *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
[45] *Id*. at 210-11.
[46] *Id*. at 212-13.
[47] *Id*. at 213-16.
[48] *Id*. at 234.
[49] Omar T. Mohammedi, *Sharia-compliant Wills: Principles, Recognition, and Enforcement*, 57 N.Y.L. SCH. L. REV. 259, 280 (2012-13).
[50] Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of American Precedent*, 57 N.Y.L. SCH. L. REV. 287, 303 (2012-13).

disputes.[51] Functioning primarily as a court of arbitration, BDA has undergone significant changes since its inception 50 years ago.[52] Present day proceedings include:

- A detailed and standardized rules of procedure.
- An internal appellate process.
- Consideration of choice of law.
- Testimony from experts on secular law and commercial practice.
- Recognition of common commercial custom.
- Belief in communal governance, as reflected in multiple individual arbitration.[53]

As noted, the BDA incorporated these features over time. "Recognizing this secular focus on procedure and procedural fairness, the BDA adopted detailed rules and procedures that contributed tremendously to the eventual secular acceptance of BDA decisions."[54]

The Beth Din of America (BDA) cases apply to situations in which:

- A contract contains an arbitration provision that designates the BDA as the preferred forum for arbitration; or
- A party to a dispute invites an opposing party to bring the case to the BDA.[55]

Anti-Foreign Law

In recent years, state legislatures have moved to limit Sharia law or the applicability of foreign law through choice of law and choice of forum clauses in contracts. Starting with Louisiana and Tennessee, 32 states have considered some limits on the application of foreign law, either through legislation or ballot initiative.[56]

Scholars generally classify initiatives or legislation in one of three ways:

- Bills that singularly restrict the use of Sharia law;[57]
- Bills that include Sharia as one of several banned types of law or tradition;[58] or

[51] *Id*. at 288.
[52] *Id*. at 288.
[53] *Id*. at 288-89. "Traditionally, Jewish law did not offer an appellate process like the American secular court system … . Over time, however, the BDA came to find that if it did not provide an internal mechanism by which parties could appeal perceived errors, secular judges would interject and substitute their own judgment. Because the ultimate goal for litigants submitting to a religious tribunals' jurisdiction (and for the tribunal itself) is to have matters resolved internally from start to finish, the BDA added an appellate process to its arbitration services." *Id*. at 293.
[54] *Id*. at 290.
[55] *Id*. at 291-92.
[56] Faiza Patel, Matthew Duss, and Amos Toh, *Foreign Law Bans: Legal Uncertainties and Practical Problems,* Center for American Progress at the Brennan Center for Justice, N.Y.U. School of Law 1 (May 2013).
[57] Alabama's proposed language read, in part: "The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia." H.R. 597 (Ala. 2011). Iowa, Missouri, and New Mexico proposed virtually the same language. Language before the Wyoming legislature would have prohibited the court from both direct use of Sharia law, and the citing of other states that use Sharia law. H.R. 8, (Wyo. 2011). Asma T. Uddin and Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 FIRST AMEND. L. REV. 363, 370-71, 373 (Winter 2012.)
[58] An example of this was the language initially proposed in Arizona, which provided, in part: "… court shall not use … [a] tenet of any body of religious sectarian law in to any decision, finding or opinion as controlling or influential authority." The bill defined "religious sectarian law", as including sharia law, canon law, halacha and karma … ." H.R. 2582 (Ariz. 2011). Udder and Pantzer, *supra* note 57, at 373-74.

- Prohibitions on foreign law generally, commonly known as a foreign or international law bill.[59]

Currently, six states have laws restricting foreign law in state courts. The states are Arizona, Kansas, Louisiana, North Carolina, South Dakota, and Tennessee.[60] Of these, South Dakota's law focuses exclusively on religious code, rather than foreign law, or foreign and religious law.[61] No foreign law bill identifies specific religions as disfavored.

The Missouri Legislature passed a foreign law bill, but the Governor vetoed the bill, citing concerns about the legislation's possible effect on international adoptions.[62]

Most recently, North Carolina passed foreign law legislation.[63] The Governor allowed it to become law without his signature.[64] The legislation does not specifically reference religions or ethnicities as disfavored, and limits the law's application to family law.

Perhaps the most notable attempt to limit court use of foreign law was the constitutional amendment placed on the ballot in Oklahoma in 2010. The amendment restricted courts to the use of federal and state law and expressly banned consideration of international and Sharia laws. The initiative defined Sharia law as Islamic law, based on the Koran and the teachings of Mohammed.[65] Fewer than one percent of Oklahoma's population self-identifies as Muslim.[66] Known as the "Save our State" amendment, the measure passed handily both in the legislature and through adoption by voters.[67]

A Muslim Oklahoma resident challenged the amendment on the basis that it violated his First Amendment rights under the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. The U.S. District Court for the Western District of Oklahoma ruled in favor of the plaintiff. The plaintiff argued that the initiative unconstitutionally interfered with his ability to indicate his wishes as detailed in his will. Specifically, the will provided for:

> charitable allotments to be made "in a manner that does not exceed the proscribed limitations found in Sahih Bukhari … a highly respected collection of the "sayings

[59] *Id*. at 373-74. The more generalist approach was tried in Michigan. It defined foreign law as "any law, rule or legal code or system other than the constitution, laws and ratified treaties of the United States and the territories of the United States, or the constitution and laws of this state …. a court … shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States … ." *Id*. at 375.
[60] Sara Praasatik, *Assessing the Viability of State International Law Prohibitions*, 35 HOUS. J. INT'L L. 465, 467 (Spring 2013).
[61] South Dakota's HB 123 reads: "No court, administrative agency or other governmental agency may enforce any provisions of any religious code."
[62] http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban_n_3660813.html.
[63] Known as HB 522, the North Carolina bill passed in July of 2013. http://www.newsobserver.com/2013/07/19/3042514/nc-senate-passes-sharia-law-bill.html.
[64] http://www.bizpacreview.com/2013/08/29/nc-shariah-ban-becomes-law-without-governors-signature-despite-cair-pressure-82373.
[65] *Id*. at 377.
[66] Ballou, *supra* note 43, at 310.
[67] Uddin and Pantzer, *supra* note 57, at 377.

> and deeds of Prophet Muhammad," and the cited provision appears to set a cap on the amount of property that a decedent may give to charity by will. It also provides for the preparation of Awad's body in a manner that "comports precisely with … Sahih Bukhari" … and for "a burial plot that allows my body to be interned [sic] with my head pointed in the direction of Mecca."[68]

His will, the plaintiff argued, would be rendered unenforceable under the amendment.[69]

The court noted that the amendment language subjected the plaintiff and other Muslims in the state to disfavored treatment.[70] In determining the proper test to apply, the Court reviewed the principles of the tests established in *Lemon v. Kurtzman*[71] and *Larson v. Valente*.[72] The Court cited *Larson* for the proposition that *Lemon* applies to laws providing a uniform benefit to all religions, while *Larson* applies in instances where a law discriminates among religions. Therefore, *Larson* provided the proper test in the Oklahoma challenge.[73] The *Larson* test requires both strict scrutiny, and more narrowly, language "closely fitting" to a compelling interest.[74]

> This case presents even stronger 'explicit and deliberate distinctions" among religions than the provision that warranted strict scrutiny in *Larson* …. *Larson* involved a … statute that imposed certain registration and reporting requirements upon only those religious organizations that solicited more than 50 percent of their funds from nonmembers …. Unlike the provision in *Larson*, the Oklahoma amendment specifically names the target of its discrimination.[75]

The court selected the *Larson* test as the proper test. To satisfy strict scrutiny, the state must show that the interest addresses a real, identified problem, rather than a mere perception of harm.[76] As the state could not identify even a single time when an Oklahoma court applied Sharia law, the court found that the state failed to illustrate an actual problem, and therefore, failed to show a compelling state interest.[77] As the state failed the first prong, the court did not reach whether the state complied with the "close fit" required of the second prong.[78]

---

[68] *Id*. at 390.
[69] *Id.* at 390-91.
[70] *Awad v. Ziriax*, 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).
[71] 403 U.S. 602 (1971). The *Lemon* test of constitutionality requires the language in question to have a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and that does not foster an excessive government entanglement with religion. *Id.* at 612-13.
[72] *Larson v. Valente*, 456 U.S. 228 (1982).
[73] *Awad*, 670 F.3d at 1126-27, 1128.
[74] *Larson*, 456 U.S. at 246-248.
[75] *Awad*, 670 F.3d at 1128.
[76] *Awad*, 670 F.3d at 1129-30.
[77] Awad, 670 F.3d at 1129.
[78] *Awad*, 670 F.3d at 1130-31.

Constitutional Impairment of Contracts

Article 1, Section 10, of the Florida Constitution provides, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."

As a result of the constitutional limitation, the courts typically invalidate statutes that retroactively apply to existing contracts. In a 1940 Florida Supreme Court case, the Court ruled any statute enacted by the Legislature void which would impair the obligation of a contract.[79] Subsequent courts, however, carved out limited exceptions.

In *Pomponio v. Claridge of Pompano Condo, Inc.*, the Florida Supreme Court recognized that the state may have a legitimate interest in amending a law that impacts existing contracts based on its police power.[80] In determining legitimacy, the Court employed a balancing test to "weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy."[81]

The Court then applied the test established in the U.S. Supreme Court case of *Allied Structural Steel Co. v. Spannaus* to determine whether a law may apply to existing contracts.[82] Under the test, a law is more likely to be upheld if it meets the following three prongs of the test, which are, cumulatively that:

- The law was enacted to deal with a broad, generalized economic or social problem.
- The law operates in an area already subject to state regulation at the time the parties' contractual obligations were originally undertaken, rather than invading an area not previously subject to regulation by the state.
- The law effects a temporary alteration of the contractual relationships of those within its coverage, instead of working a severe, permanent, and immediate change in those relationships irrevocably and retroactively.[83]

In an impairment of contracts challenge to a local ordinance, the Fifth District Court of Appeal reiterated that laws reasonable and necessary to preserve public health, safety, and welfare are constitutional even if obligations of a private contract are impaired.[84] Still, governmental authority is not unrestrained."[85]

In *Cohn v. Grand Condominium Association, Inc.*, the statute changed voting arrangements in condominium governance. In employing the *Pomponio* test, the court determined that the state failed to identify a current social problem, the law did not

[79] *Bedell v. Lassiter*, 143 Fla. 43, 49 (Fla. 1940).
[80] *Pomponio v. Claridge of Pompano Condo, Inc.*, 378 So. 2d 774, 781 (Fla. 1979).
[81] *Id*. at 780.
[82] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978). "Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation." *Id.* at 245.
[83] *Pomponio*, 378 So. 2d at 779.
[84] *Brevard County v. Florida Power & Light Co*., 693 So. 2d 77, 81 (Fla. 5th DCA 1997).
[85] *Id*. at 81.

regulate the specific area at issue at the time that the condo organized, and the resulting change from the law would be severe, permanent, and immediate.[86] Therefore, the state failed to meet its burden.[87] On appeal, the Florida Supreme Court affirmed but recognized that new laws apply to related contracts with provisions which incorporate future changes to the law.[88]

III. Effect of Proposed Changes:

SB 386 restricts courts from applying foreign law, legal codes, and systems to disputes brought under chs 61 and 88, F.S. These chapters relate to divorce, alimony, the division of marital assets, child support, and child custody

This bill restricts courts from applying foreign law to dissolution of marriage cases and issues involving multiple-state child support enforcement actions.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution in the foreign forum.

This bill does not apply to:

- Corporations, partnerships, and other types of business associations, unless chs. 61 or 88, F.S., are implicated;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which are preempted by federal law.

Although this bill recognizes that a party may waive his or her rights through a contract, the bill requires a court to narrowly construe the scope of the waiver.

The bill does not identify any laws or conduct authorized under foreign laws within the family law context which would deny a person's fundamental liberties, rights, and privileges. As such, courts will likely determine the impact of the bill on a case-by-case basis.

[86] *Cohn v. Grand Condominium Assoc.*, 26 So. 3d 8, 11 (Fla. 3d DCA 2009).
[87] *Id.* at 11.
[88] *Cohn v. Grand Condominium Assoc.*, 62 So. 3d 1120 (Fla. 2011).

The bill requires a court to invalidate contractual provisions or judgments not based on laws that provide the parties with the "same" constitutional protections as the state and federal constitutions. As the "same" standard appears inflexible, the bill may result in the invalidation of contractual provisions or judgments based on foreign laws that grant the parties similar, or greater rights, privileges, and immunities as those granted by this country.

The bill declares in s. 45.022(4), F.S., that court orders based on disfavored foreign laws are void and unenforceable. However, the bill does not specifically address a situation in which a person seeks to enforce in this state a court order from a sister state which is based on a disfavored foreign law. In those situations, a court may likely rule that the Full Faith and Credit Clause of the U.S. Constitution requires enforcement of the order.

Similarly, the bill does not specifically address how a court would reconcile the bill with ch. 88, F.S., the Uniform Interstate Family Support Act (UIFSA), which was mandated by Congress. Under the bill, a support order entered in a foreign nation whose laws are inconsistent with this nation's constitutional "fundamental liberties, rights, and privileges" is unenforceable. In contrast, ch. 88, F.S., renders foreign support orders and agreements unenforceable if they are "manifestly incompatible with public policy." Although the two provisions appear to overlap (for example, manifest incompatibility includes due process and opportunity to be heard), the scope of the bill is likely broader than the restrictions on foreign law under the UIFSA.

The bill takes effect upon becoming a law.

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:

This bill implicates four constitutional issues:

First Amendment

State legislatures that have restricted courts from applying foreign law have banned the use of Sharia law, banned several types of law or tradition including Sharia law, or prohibited the use of foreign law generally. Of the three initiatives, this bill comes under the third category, as it contains no mention of Sharia or another specific type of banned

law other than foreign law in general. In contrast to the law at issue in *Awad v. Ziriax*,[89] the bill appears to carry the greatest merit constitutionally, as it does not specifically single out a particular religion for disfavor or preference. If this bill is challenged on First Amendment grounds, a court will review the language for facial discrimination. As religion is not mentioned at all, the court will deem it facially neutral. A court will then apply the *Lemon* test, and likely find both a secular government purpose and that the law does not facilitate excessive governmental entanglement with religion. Because of this, a court will likely uphold the law from a First Amendment challenge.

Impairment of Contracts

The bill takes effect upon becoming a law and applies to lawsuits filed after the effective date. If a party attempts to apply the law to invalidate pre-existing contracts, the party must demonstrate that the law is a legitimate use of the state's police power and that the change operates in less than a severe, permanent, and immediate fashion, as required in *Pomponio v. Claridge of Pompano Condo, Inc*.[90] This test places a very high burden on the state. Alternatively, this bill may reach back to existing contracts, if a contractual provision expressly incorporates future changes to the law.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"[91] and the action must pose a "great potential for disruption or embarrassment"[92] to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as perception of the U.S. abroad. These factors could only be evaluated if and when a challenge to this bill was brought.

Separation of Powers

The first three articles of the U.S. Constitution define the powers given to the three branches of government in the United States.[93] Article I defines the legislative branch and vests with it all power to make law. Article II defines the executive branch and vests in it the power to enforce the law. Article III defines the judicial branch and vests in it all

[89] 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).
[90] 378 So. 2d 774 (Fla. 1979).
[91] *Zschernig v. Miller*, 389 U.S. 429, 434 (1968).
[92] *Id*. at 435.
[93] Articles I, II, III, U.S. Const.

judicial power. For time immemorial, that power has been understood to mean the power to interpret and apply the law.[94]

As discussed above, to the extent that this bill directs Florida courts to consider and interpret foreign decisions and law in a certain manner, it may interfere with the federal government's ability to govern foreign policy with one voice. As such, this bill could be challenged as preempted by the federal government. Similarly, as previously stated, the judiciary's constitutional role is to act as the sole interpreter of laws; therefore, the bill could be challenged as an infringement on the essential role of the judicial branch in violation of the constitutional separation of powers. Similarly, the Florida Constitution explicitly mandates separation of powers between branches of the Florida government. Article II, section 3 of the Florida Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

Because of this language, Florida's separation of powers doctrine is even stronger than the federal concept of separation of powers. Therefore, the bill may face an additional separation of powers inquiry.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The extent to which private parties will be impacted by the provisions of this bill is unknown.

C. Government Sector Impact:

The Office of the State Courts Administrator expects an impact from the bill on judicial workload in ch. 61 and ch. 88, F.S., proceedings by requiring the court to determine whether application of foreign law would grant litigants the same fundamental rights as the state and federal constitutions grant. These determinations will require the court to research liberties, right, and privileges granted under foreign law. The fiscal impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.[95]

VI. Technical Deficiencies:

None.

---

[94] *Marbury v. Madison*, 5 U.S. 137, 177 (1803).
[95] Office of the State Courts Administrator, *2014 Judicial Impact Statement* (December 30, 2013); on file with the Senate Judiciary Committee.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 45.022 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 Hays

11-00143-14 2014386__

A bill to be entitled

An act relating to the application of foreign law in certain cases; creating s. 45.022, F.S.; providing legislative intent; defining the term "foreign law, legal code, or system"; providing for applicability; specifying the public policy of this state on the application of a foreign law, legal code, or system in proceedings brought under or relating to chapter 61 or chapter 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; providing that certain decisions rendered under such laws, codes, or systems are void; providing that certain contracts and contract provisions are void; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; providing that claims of forum non conveniens or related claims must be denied under certain circumstances; providing that the act may not be construed to require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters in violation of specified constitutional provisions or to conflict with any federal treaty or other international agreement to which the United States is a party to a specified extent; providing for severability; providing a directive to the Division of Law Revision and Information; providing an effective date.

Florida Senate - 2014 **SB 386**

11-00143-14 2014386__

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

Section 1. Section 45.022, Florida Statutes, is created to read:

45.022 Application of foreign law contrary to public policy in certain cases.—

(1) While the Legislature fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the interest of the state to protect and promote liberties, rights, and privileges granted under the State Constitution or the United States Constitution.

(2) As used in this section, the term "foreign law, legal code, or system" means any law, legal code, or system of a foreign country, or a state, nation, or subdivision thereof, outside the United States or its territories, including, but not limited to, a foreign or international organization claiming the status of a country, state, or nation or asserting legal authority to act on behalf of one or more foreign countries, states, nations, or any other similar international organizations or tribunals, which is applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. The term does not include the common law and statute laws of England as described in s. 2.01 or any laws of the Native American tribes in this state.

(3) This section applies:

(a) Only to actual or foreseeable denials of a natural

person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution from the application of a foreign law, legal code, or system in actions or proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88 and filed after the effective date of this act; and

(b) To a corporation, partnership, or other form of business association only as necessary to provide effective relief in actions or proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88.

(4) Any court, arbitration, tribunal, or administrative agency ruling or decision violates the public policy of this state and is void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal code, or system that does not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

(5) A contract, or contractual provision, if severable, violates the public policy of this state and is void and unenforceable if:

(a) The contract or contractual provision provides for the choice of a foreign law, legal code, or system to govern some or all of the disputes arising from the contract between the parties and the foreign law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, which would deny the parties the same fundamental liberties, rights, and privileges

guaranteed by the State Constitution or the United States Constitution. This paragraph does not limit the right of a natural person in this state to voluntarily restrict or limit his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution by contract or specific waiver consistent with constitutional principles, but the language of any such contract or waiver must be strictly construed in favor of preserving such liberties, rights, and privileges; or

(b) The contract or contractual provision provides for the choice of venue or choice of forum outside a state or territory of the United States and the enforcement of the choice of venue or choice of forum provision would result in a violation of any fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

(6) If a natural person who is subject to personal jurisdiction in this state seeks to maintain litigation, arbitration, agency, or similarly binding proceedings in this state and the courts of this state find that granting a claim of forum non conveniens or a related claim denies or would likely lead to the denial of any fundamental liberties, rights, and privileges of the nonclaimant guaranteed by the State Constitution or the United States Constitution in the foreign forum with respect to the matter in dispute, it is the public policy of this state that the claim be denied.

(7) This section may not be construed to:

(a) Require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters, including, but not limited to, the

election, appointment, calling, discipline, dismissal, removal, or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam, or member of the clergy of the religious organization, or determination or interpretation of the doctrine of the religious organization, if such adjudication or prohibition would violate s. 3, Art. I of the State Constitution or the First Amendment to the United States Constitution; or

(b) Conflict with any federal treaty or other international agreement to which the United States is a party to the extent that such federal treaty or international agreement preempts or is superior to state law on the matter at issue.

Section 2. If any provision of this act or its application to any natural person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

Section 3. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. 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)

4/9/14
Meeting Date

Topic _____ Bill Number 386 *(if applicable)*

Name Pamela Burch Fort Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 104 S. Monroe Street Phone 850-425-1344
Street

Tallahassee FL 32301 E-mail TcgLobby@aol.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing ACLU of Florida

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

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

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

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)

4/9/2014
Meeting Date

Topic _____ Bill Number 386 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic Application of Foreign Laws

Bill Number SB 386 *(if applicable)*

Name Mark Schlakman

Amendment Barcode as well as Amendment if introduced *(if applicable)*

Job Title Senior program director

Address 426 W. Jefferson St.
Street

Phone 850 644-4614

Tallahassee FL 32301
City *State* *Zip*

E-mail MSchlakman@admin.fsu.edu

Speaking: ☐ For ☑ Against ☑ Information

Representing FSU Center for the Advancement of Human Rights (and on behalf of the FL BAR International Law Section and ADL)

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)

4-9-14
Meeting Date

Topic Foreign law

Bill Number 386 *(if applicable)*

Name Sara Johnson

Amendment Barcode *(if applicable)*

Job Title Legislative Assistant to the President

Address 4853 S. Orange Ave *Street*

Phone 850.567.8143

Orlando *City* Florida *State* 32806 *Zip*

E-mail sarajo@flfamily.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Family Action

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)

4/9/14
Meeting Date

Topic FOREIGN LAW

Bill Number [redacted] 386 *(if applicable)*

Name MARK FLYNN

Amendment Barcode _____ *(if applicable)*

Job Title LOBBYIST

Address 210 BRITT ST.
Street

Phone 850-320-5555

TALLAHASSEE FL 32301
City *State* *Zip*

E-mail MWFLYNN@COMCAST.NET

Speaking: ☐ For ☑ Against ☐ Information

Representing EMERGE USA

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

4-9-14
Meeting Date

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

Topic Foreign Law

Bill Number SB 386 *(if applicable)*

Name Amy Datz

Amendment Barcode _____ *(if applicable)*

Job Title Self

Address 1130 Crestview Ave
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 322-7599

E-mail amalie datz @ mac.com

Speaking: ☐ For ☑ Against ☐ Information

Representing NCJW

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

SENATOR ALAN HAYS
11th District

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

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 386 – Application of Foreign Law in Certain Cases**

Date: April 3, 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,

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

emergeUSA

Senate Bill 386 – On Rules Agenda 4/9/14

"Application of Foreign Law in Certain Cases"

As currently written, Emerge USA, opposes Senate bill 386, "Application of Foreign Law in Certain Cases."

Emerge USA is a nonprofit, nonpartisan organization that represents over 150,000 registered Middle Eastern and South Asian American voters throughout Florida.

Our state legislature should oppose Senate bill 386 because of the practical problems it will create for families and business and the discriminatory message it conveys.

The Florida Senate has not given SB 386 a proper vetting:

- The bill primarily seeks to modify Florida Statutes 61 and 88, the Dissolution of Marriage and Interstate Family Support Acts, yet was not referred to the Children, Families, and Elder Affairs Committee.
- In the Judiciary and Governmental Oversight & Accountability Committees it was moved on the agenda to about the last ten minutes of the both meetings and then both times a motion for a vote at a time certain was made that prevented public testimony.

HB 386 is a solution without a problem, will disrupt Florida family and religious life, and threatens Florida's business community:

- The U.S. and Florida constitutions very clearly guarantee our fundamental liberties, rights, and privileges. If passed, this legislation could potentially disrupt the routine judicial enforcement of foreign laws and judgments in **divorce**, **adoption**, and **child custody cases**, thus disrupting family life for Floridians.
- SB 386 will impact the ability of Florida businesses to contract with foreign corporations and will affect the state's ability to attract international business investment.
- SB 386 will impede Floridians who seek to settle family and other personal disputes through arbitration mechanisms established in their religious communities.
- Sponsors of SB 386 say this legislation will the constitutional rights of American citizens against the infiltration and incursion of foreign laws and foreign legal doctrines..." This is a perceived problem that does not exist. There is no single Florida court case that has presented a judicial problem that would be addressed by this bill.
- SB 386 is the same bill as HB 58, which failed to pass in the 2013 legislative session. It is also a modification of SB 1360 which died in the Senate and failed to have a House companion in 2012.

Miami Herald Other Views

Posted on Monday, 04.07.14

BY LAILA M. ABDELAZIZ
LABDELAZIZ@EMERGE-USA.ORG

For the fourth year in a row, Florida legislators are facing the "Application of Foreign Law in Certain Cases" bill sponsored by Sen. Alan Hays, R-Umatilla, in the upper chamber and Rep. Neil Combee, R-Polk City, in the House.

Commonly known as the "Anti-Foreign Law Bill," SB 386 and HB 903 aim to prohibit Florida judges from applying foreign laws unless the relevant foreign law guarantees the "same" constitutional protections outlined by the U.S. and Florida constitutions.

Bill sponsors have not been able cite any instances in Florida courts where a litigants' rights have been denied due to the application of an odious foreign law, affirming that the current standard has always assured a person's fundamental liberties, rights, and privileges are protected.

According to the Florida Bar International Law Section, the bills are "a significant departure from the applicable standard under Florida." The current standard "has a proven track record" and "allows Florida courts to refuse to apply any non-Florida law that would offend Florida's public policy."

According to Senate committee analysis, SB 386 and HB 903 are also likely unconstitutional because they offend deeply ingrained constitutional principles, such as the separation of powers, the Contract Clause, and freedom of religion.

Each time Sen. Hays has proposed a version of his "Anti-Foreign Law Bill" it has faced serious criticisms. The legal community and civil rights community have both opposed it for being impractical, dangerous, and discriminatory against minority communities. The Florida Bar International and Family Law sections both oppose the bill, as well as the Anti-Defamation League, ACLU, NAACP and Emerge USA. Most recently, the Florida Chamber of Commerce testified about its concerns with SB 386.

Civil rights organizations stand on strong ground in their opposition to SB 386 and HB 903, a bill that is discreetly known in Tallahassee as the "Anti-Sharia Bill." SB 386 and HB 903 are based on David Yerushalmi's American Laws for American Courts model legislation, a movement with a self-appointed mission to "protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Sharia Law."

Although bill sponsors deny this legislation is targeting any specific religious group, Sen. Hays was highlighted at the recent Christian Family Coalition's Day in Tallahassee, an event with anti-Sharia law undertones, as the "sponsor of American Laws for American Courts."

Groups lobbying Florida legislators in support of SB 386 and HB 903 include the Florida Family Association (listed as an active hate group by the Southern Poverty Law Center) and the Florida Family Policy Council (an anti-Gay, anti-Muslim group). Groups like the Florida Family Association

are lobbying our state legislators to support the "Anti-Foreign Law Bill" because it will "prohibit Sharia and other foreign laws."

This year, Sen. Hays is also the sponsor of Senate Bill 864, "Instructional Materials for K-12 Public Education," a bill that aims to localize school textbook selection in an attempt to remove the state from the review and selection process. Apart from the myriad of education policy issues this change will create, the motivation for this legislation comes from protestors in Volusia County that called for students to tear out their history textbook's section on Islam. The complaints claimed that the Prentice Hall World History textbook was biased in favor of Islam. Protestors unsuccessfully lobbied the Volusia County school board to change texts, but were ultimately rejected.

Preventing legislation driven by groups with discriminatory agendas from becoming law will uphold our state's values of diversity and pluralism. State legislators should stand strong against intolerance and firmly oppose both SB 386 in the Senate and HB 903 in the House once and for all.

Laila Abdelaziz works on legislative issues for Emerge USA, a non profit that advocates for civic engagement and related issues for the Muslim Arab and South Asian communities.

Read more here: http://www.miamiherald.com/2014/04/07/4045374/dont-enact-intolerance-into-state.html#storylink=cpy

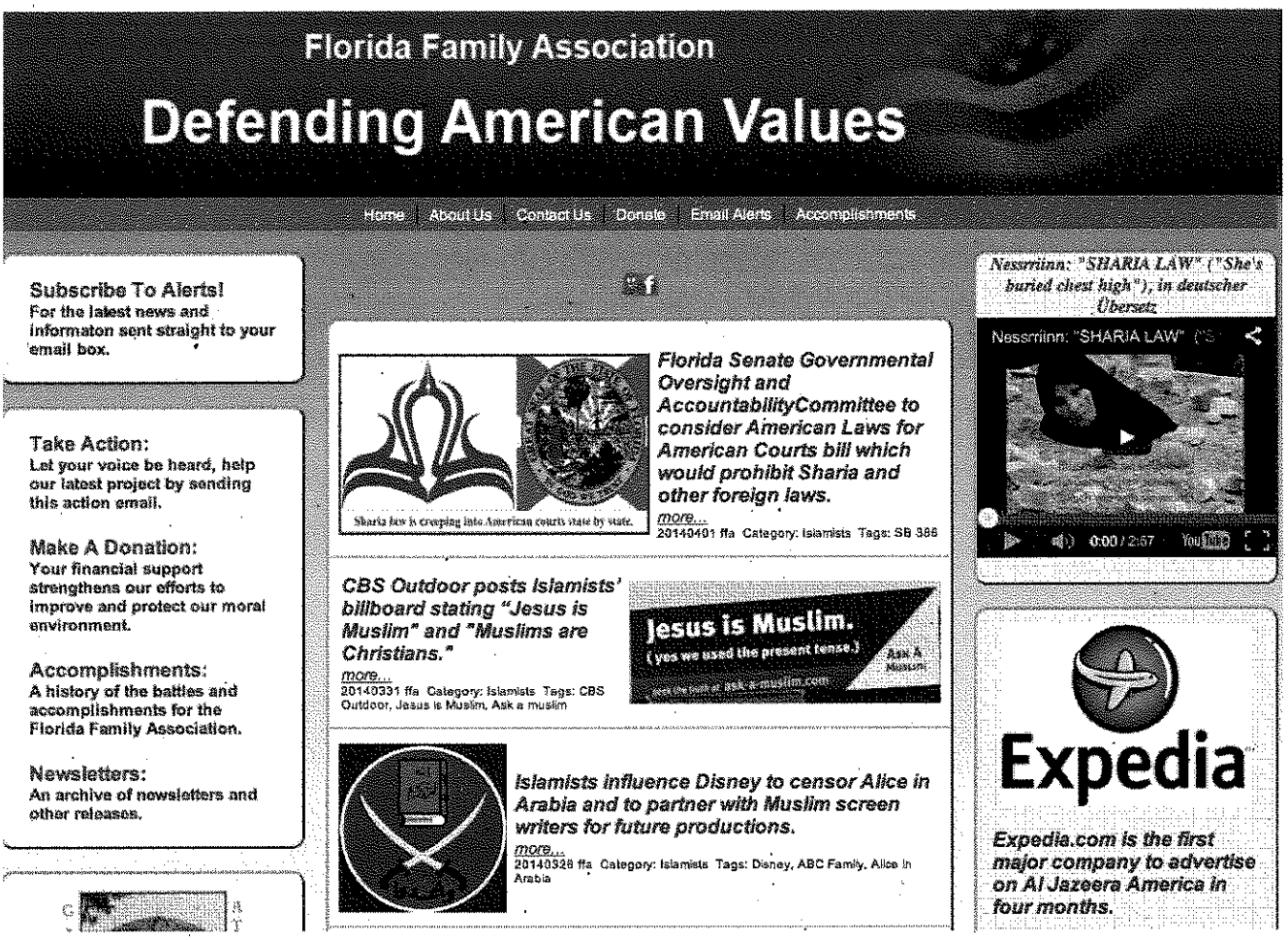
David Caton, whose one person Florida Families Association has the passage of Senate bill 386 as his top legislative priority.

Caton is described as:

In a 2012 article, the Tampa Bay Times Editorial Board described Caton as a "one-man force of anti-Muslim bigotry."

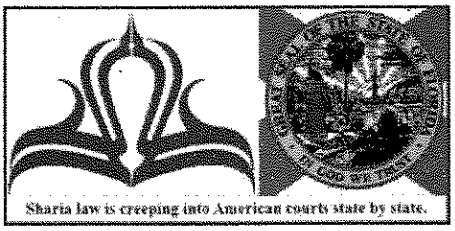
Pulitzer Prize winning-columnist Daniel Ruth described Caton as a "plague of boils on the community's spiritual life."

From the Florida Families Association website:



Florida Senate Rules Committee to consider American Laws for American Courts bill which would prohibit Sharia and other foreign laws.

This is the last Senate committee before full Senate.



Last Senate committee before full Senate. Florida Senate Rules Committee to consider American Laws for American Courts bill which would prohibit Sharia and other foreign laws.

Please click here to send your email to the committee members.

The Florida Senate Rules Committee will consider SB 386 titled *Application of Foreign Law in Certain* Cases on Wednesday, April 9, 2014 between 4:00 and 6:00 pm. If approved by the Rules Committee this legislation should be scheduled for a vote by the full Florida Senate.

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 1140
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Hays
SUBJECT:	Public Records/Division of Emergency Management/Emergency Planning
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon/Spaulding	Ryon	MS	**Fav/CS**
2.	Kim	McVaney	GO	**Favorable**
3.	Ryon/Spaulding	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1140 creates a public records exemption for certain personal identification information provided to the Florida Division of Emergency Management (DEM) by an individual or a business for the purpose of receiving assistance with emergency planning. The bill provides for retroactive application of the exemption, and for legislative review and repeal under the provisions of the Open Government Sunset Review Act.

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

Because the bill creates 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 Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] 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 provisions[8] 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 (s*ee 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.

Open Government Sunset Review Act

The Open Government Sunset Review Act[13] sets forth a legislative review process for newly-created or substantially-amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public-records or public-meetings exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- 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.
- Protects trade or business secrets.

The Act also requires consideration of six questions regarding the scope of the exemption and related protections.[14]

Division of Emergency Management's "Get a Plan" Campaign

The Florida Division of Emergency Management (DEM), established in the Executive Office of the Governor,[15] is the state's emergency management agency. The State Emergency Management Act directs the DEM to oversee and manage emergency preparedness, response, recovery and mitigation programs in Florida.[16] Among the DEM's statutorily required duties is the requirement to institute a multifaceted public educational campaign on emergency preparedness.[17] Such a campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.[18]

In 2006, the DEM launched its "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. "Get a Plan" is an online preparedness tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user. The tool allows users to establish a user name and password to access the online tool at their convenience to adjust or update any aspect of their emergency response plan.

Emergency plans may include sensitive information such as alternative locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, supplier, and employees; backup suppliers for key materials and services dependent

[13] Section 119.15, F.S.
[14] Section 119.15(6)(a), F.S.
[15] Section 14.2016, F.S.
[16] Section 252.31, F.S.
[17] Section 252.35(2)(i), F.S.
[18] Id.

upon by businesses; important records and documents that the business needs to operate; and emergency community contacts and disaster resources.

From 2006 to 2013, the DEM's "Get a Plan" tool hosted emergency response plans for 50,628 families and 8,551 businesses. Due to technical issues, the "Get a Plan" online tool has been temporarily removed from the DEM's website. However, the DEM plans to re-launch the "Get a Plan" online tool with an improved design and function to encourage more participation among Florida residents and businesses in planning for emergencies.[19]

Currently, information collected by the DEM for the purpose of assisting families and businesses with emergency planning is not exempt from the public records requirements in s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

III. Effect of Proposed Changes:

The bill creates s. 252.905, F.S., to exempt from public records requirements any information provided by an individual or business to the DEM for the purpose of receiving assistance with emergency planning. The exemption applies to information held by the DEM before, on, or after July 1, 2014.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill contains a finding of public necessity for this exemption. It states that it is a public necessity that information furnished by a person or business to the DEM for the purpose of obtaining assistance with emergency planning be exempt from public records requirements. The finding provides that the DEM manages a public awareness program to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. These disaster plans may include sensitive information and the potential disclosure of such information serves as a disincentive for creating a disaster plan. The bill finds that without the exemption, the effective and efficient administration of the DEM's statewide public awareness program is significantly impaired. The bill further finds that the harm that may result from the release of personal or business information obtained by the DEM for emergency disaster planning outweighs any public benefit that may be derived from disclosure of information.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[19] "Get a Plan" Campaign information obtained via e-mail correspondence with DEM staff on March 13, 2014. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

B. Public Records/Open Meetings Issues:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.[20] The public records exemption in the bill applies only to the DEM for the purpose of providing assistance with emergency planning.

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.

[20] *Memorial Hospital-West Volusia v. News-Journal Corporation,* 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation,* 724 So. 2d 567 (Fla. 1999).

VIII. Statutes Affected:

This bill creates section 252.905 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 Military and Veterans Affairs, Space, and Domestic Security on March 19, 2014:
The committee substitute:

- Creates a new section in ch. 252, F.S., to accommodate the public records exemption in the bill.
- Provides that the exemption is subject to the Open Government Sunset Review Act.
- Adds to the statement of public necessity that without the exemption, the effective and efficient administration of DEM's public awareness program is significantly impaired.

B. Amendments:

None.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Hays

583-02834-14 20141140c1

A bill to be entitled

An act relating to public records; creating s. 252.905, F.S.; creating an exemption from public records requirements for information furnished to the Division of Emergency Management by a person or business for the purpose of obtaining assistance with emergency planning; providing for retroactive application of the exemption; providing for future repeal and legislative review of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 252.905, Florida Statutes, is created to read:

252.905 Emergency planning information; public records exemption.—

(1) Any information furnished by a person or a business to the division for the purpose of being provided assistance with emergency planning is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by the division before, on, or after the effective date of this exemption.

(2) This section 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

Florida Senate - 2014 CS for SB 1140

583-02834-14 20141140c1

necessity that information furnished by a person or a business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Division of Emergency Management manages a statewide public awareness program to educate the public to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public awareness program encourages individuals, families, and businesses to develop disaster plans in preparation of and in response to such natural or manmade disasters. Emergency plans may include sensitive information such as alternate locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, suppliers, and employees; backup suppliers for key materials and services depended upon by the business; important records and documents that the business needs to operate; and emergency community contacts and disaster resources. Without this exemption, the effective and efficient administration of the Division of Emergency Management's statewide public awareness program is significantly impaired. The potential disclosure of sensitive information has served as a disincentive for creating a disaster plan, particularly among businesses that fear that the disclosure of sensitive information may place their businesses at a competitive disadvantage. Therefore, the Legislature finds that the harm that may result from the release of personal or business information obtained by the Division of Emergency Management for the purpose of providing assistance with emergency planning for the preparation of and response to a natural or manmade disaster

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

outweighs any public benefit that may be derived from disclosure of the information.

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)

4 / 9 /2014
Meeting Date

Topic _____ Bill Number 1140 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

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

4-9-14
Meeting Date

Topic Dem Public Records Exemption — Bill Number 1140 *(if applicable)*

Name Julie Bdoerts — Amendment Barcode _____ *(if applicable)*

Job Title External Affairs Director

Address 2555 Shumard Oak BND — Phone 850-413-9969
Street

Tallahassee FL 32399 — E-mail julie.roberts@em.myflorida.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Division of Emergency mgmt

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

SENATOR ALAN HAYS
11th District

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

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 1140 – Public Records/Emergency Planning or Notification by Agency**

Date: April 3, 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,

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/CS/SB 608
INTRODUCER:	Rules Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Hukill
SUBJECT:	Monuments on the Capitol Complex
DATE:	April 10, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	**Fav/CS**
2.	McKay	McVaney	GO	**Favorable**
3.	Ryon	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 608 establishes a framework for the placement and design of monuments authorized by the Legislature to be placed on the premises of the Capitol Complex. This framework designates the Department of Management Services (DMS) as the entity responsible for approving the design and placement of such monuments. In carrying out this responsibility, the DMS must consider recommendations from the Florida Historical Commission and consult with the Division of Historical Resources of the Department of State.

The bill also requires the DMS, in consultation with the Florida Historical Commission, to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments.

The bill establishes the POW-MIA Chair of Honor Memorial in the Capitol Complex to honor the sacrifices endured by members of the U.S. Armed Forces who were held as prisoners of war or remain missing in action. The new framework provided in the bill will be applied to determine the appropriate design and placement of the Chair of Honor. The Chair of Honor will be funded by the Florida chapters of the Rolling Thunder, Inc., without appropriation of state funds.

II. Present Situation:

Veterans in Florida

Florida has the third largest population of veterans in the nation with over 1.5 million, behind only California and Texas.[1] Florida has more than 113,000 veterans from World War II, the largest number in the nation.[2] In addition, approximately 75 percent of Florida's veteran population is wartime veterans, including more than 231,000 veterans of the Afghanistan and Iraq wars and 498,000 Vietnam-era veterans. There are approximately 187,000 military retirees who call Florida home.[3]

Military Recognition by Florida Legislature

The Legislature recognizes the military service of Florida residents through the Florida Veterans' Hall of Fame, the Florida Medal of Honor Wall, the Florida Veterans' Walk of Honor, and the Florida Veterans' Memorial Garden. The Florida Veterans' Hall of Fame recognizes and honors those military veterans who, through their works and lives during or after military service, made a significant contribution to the State of Florida.[4] The Florida Medal of Honor Wall recognizes and honors those who are accredited, or associated by birth, to the State of Florida, who through their conspicuous bravery and gallantry during wartime, and at considerable risk to their own lives, earned the Medal of Honor.[5] The Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden recognizes and honors those military veterans who have made significant contributions to the state through their service to the United States.[6]

POW-MIA

More than 83,000 Americans are missing from World War II, the Korean War, the Cold War, the Vietnam War and the 1991 Gulf War.[7] As of October, 2013, there are a total of 1,643 unaccounted for military servicemembers in Southeast Asia since the end of the Vietnam War, with 57 indicating Florida as their home of record.[8] In addition, 32 military servicemembers from Florida have either been accounted for (including POW returnees and POW escapees) or their remains have been recovered and identified since the end of the war.[9]

In accordance with the Missing Service Personnel Act,[10] the current number of personnel missing from operations in Iraq and other current conflicts is seven: two service members from Operation

---

[1] FDVA, Annual Report Fiscal Year 2012-13, Facts and Figures. p. 4. Available at: http://floridavets.org/wp-content/uploads/2013/12/Annual-Report-2012-13-Final.pdf
[2] *Id.*
[3] FDVA, Fast Facts, available at: http://floridavets.org/?page_id=50.
[4] Section 265.003, F.S.
[5] Section. 265.002, F.S.
[6] Section 5, ch. 2014-1, L.O.F. Section 5 became effective on March 31, 2014.
[7] Department of Defense Prisoner of War, Missing Personnel Office (DPMO), available at: http://www.dtic.mil/dpmo/.
[8] *Id.*
[9] *Id.*
[10] 10 U.S.C. sections 1501-1513, Missing Service Personnel Act (MSPA). The MSPA tasks the DPMO with responsibility for policy, control and oversight of the entire process of investigation and recovery of missing persons (including matters related to search, rescue, escape and evasion) and for coordination between the Department of Defense and other U.S. agencies on all matters concerning missing persons.

Desert Storm; and one service member and three Department of Defense contractors from Operation Iraqi Freedom; and one service member from Operation Enduring Freedom.[11]

Rolling Thunder, Inc.

Incorporated in 1995, Rolling Thunder, Inc., is a class 501(c)(4) non-profit organization with over 94 chartered chapters throughout the United States and members abroad, including eight chapters in Florida.[12]

The major function of Rolling Thunder, Inc. is to publicize the POW-MIA issue, educate the public that many American Prisoners of War were left behind after all previous wars, and help correct the past and to protect future veterans from being left behind should they become Prisoners Of War-Missing In Action.[13]

Managing Agency for the Capitol Center

Chapter 272, F.S., provides that the Capitol Center[14] is under the general control and supervision of the DMS,[15] which includes the management and maintenance of both the grounds and buildings.[16] Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.[17] This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.[18] After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.[19]

The "Capitol Complex" is defined to include:

> "that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida."[20]

---

[11] DPMO website, available at: http://www.dtic.mil/dpmo/
[12] Rolling Thunder, Inc. website, available at: http://www.rollingthunder1.com/index.html.
[13] *Id.*
[14] Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.
[15] Section 272.03, F.S.
[16] Section 272.09, F.S.
[17] Section 272.07, F.S.
[18] Department of Management Services, Senate Bill 608 Agency Analysis (February 19, 2014) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[19] *Id.*
[20] Section 281.01, F.S.

Division of Historical Resources

The Division of Historical Resources is established within the Department of State[21] and is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of, and public access to, information about Florida's historic sites, properties and objects related to Florida's history and culture.[22] This includes cooperating with, advising and assisting federal and state agencies and local governments in carrying out their historic preservation responsibilities.

Florida Historical Commission

The Legislature established the Florida Historical Commission (Commission), within the Department of State, in 2001 for the purpose of assisting the Division of Historical Resources in carrying out its programs, duties, and responsibilities.[23] The Commission is comprised of eleven members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives and must include licensed architects and historians with required specializations.[24]

The Commission is statutorily required to provide assistance, advice, and recommendations to the Division of Historical Resources in:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties;
- Establishing criteria for use in assessing the significance of historic and archaeological sites and properties;
- Evaluating proposals for awards of special category historic preservation grants-in-aid administered by the Division of Historical Resources;
- Providing an active outreach program to encourage public understanding of and involvement in the preservation of the state's historic and archaeological sites and properties;
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies; and
- Recommending rules relating to the historic preservation programs administered by the Division of Historical Resources pursuant to ch. 267, F.S.[25]

III. Effect of Proposed Changes:

Section 1 creates s. 265.0031, F.S., to establish the POW-MIA Chair of Honor Memorial on the premises of the Capitol Complex to honor the sacrifices endured by members of the U.S. Armed Forces who were held as prisoners of war or remain missing in action. The bill directs the DMS to approve the design and placement of the Chair of Honor, taking into consideration recommendations from the Florida Department of Veterans' Affairs, the Florida chapters of the Rolling Thunder, Inc., and the Florida Historical Commission. Additionally, DMS must

[21] Section 20.10(2)(b), F.S.
[22] Section 267.031, F.S.
[23] Chapter 2001-199, L.O.F.
[24] Section 267.0612(1)(a)1., F.S.
[25] s. 267.0612(6)(a)-(f), F.S.

coordinate with the Division of Historical Resources regarding the Chair of Honor's design and placement.

The Chair of Honor will be funded by the Florida chapters of the Rolling Thunder, Inc., without appropriation of state funds.

Section 2 creates s. 265.111, F.S., to establish a framework for the construction and placement of monuments on the Capitol Complex. The bill defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history, not including any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

The bill prohibits the construction and placement of a monument on the premises of the Capitol Complex unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering recommendations of the Florida Historical Commission. Additionally, the DMS must coordinate with the Division of Historical Resources regarding a monument's design and placement.

The bill also requires the DMS in consultation with the Florida Historical Commission to set aside an area of the Capitol Complex, excluding the State Capitol Circle Office Complex, to be dedicated as a memorial garden on which authorized monuments shall be placed.

Section 3 amends s. 267.0612, F.S., to include providing recommendations to the DMS on the design and placement of Capitol Complex monuments as an additional responsibility of the Florida Historical Commission.

Section 4 creates an undesignated section of the Florida Statutes to state that the provisions in section 2 of the bill do not apply to a monument constructed and placed on the premises of the Capitol Complex before July 1, 2014.

Section 5 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:

None.

C. Government Sector Impact:

DMS will incur minimal costs associated with the maintenance of the POW-MIA Chair of Honor monument area.[26] The DMS could incur additional costs in creating the memorial garden.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Bill 250 directs the DMS to designate an area in the Capitol courtyard for a memorial for Henry Morrison Flagler.[27] Chapter 2014-1, L.O.F., directs the DMS to designate an area on the Capitol Complex grounds for a Florida Veterans' Walk of Honor and a Florida Veterans' Memorial Garden.[28]

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 265.0031 and 265.111.

This bill amends section 267.0612 of the Florida Statutes.

This bill creates an undesignated section 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 Rules on April 9, 2014:

- Shifts the responsibility of approving the placement and design of authorized Capitol Complex monuments from the Florida Historical Commission to the DMS.
- Clarifies that the memorial garden may not be established on the premises of the State Capitol Circle Office Complex.

[26] *See supra* note 18.
[27] As of April 10, 2014, SB 250 has been reported favorably by two Senate committees, and is in the Appropriations Committee.
[28] CS/CS/HB 7015 was signed into law on March 31, 2014, and became effective on that date.

- Removes the provision in the bill allowing existing Capitol Complex monuments to be resituated in the memorial garden.
- Provides that the monument placement and design framework does not apply to monuments constructed before July 1, 2014.

CS by Military and Veterans Affairs, Space, and Domestic Security on March 5, 2014:

- Prohibits monuments from being placed on the premises of the Capitol Complex unless authorized by general law.
- Requires the Florida Historical Commission to approve the design and placement of monuments authorized by the Legislature, taking into consideration recommendations from the DMS.
- Requires the DMS in consultation with the Florida Historical Commission to set aside an area of the Capitol Complex to be dedicated as a memorial garden for authorized monuments to be placed or for existing monuments to be resituated.
- Requires the Florida Historical Commission to approve the design and placement of the POW-MIA Chair of Honor, taking into consideration recommendations of the DMS, the Florida Department of Veterans' Affairs, and the Florida chapters of the Rolling Thunder, Inc.

B. Amendments:

None.

629070

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 265.0031, Florida Statutes, is created to read:

265.0031 POW-MIA Chair of Honor Memorial.—

(1) It is the intent of the Legislature to recognize and honor the sacrifices endured by members of the Armed Forces of the United States who were held as prisoners of war or remain missing in action.

629070

(2) For purposes of this section, the term "Capitol Complex" has the same meaning as in s. 281.01.

(3) There is established the POW-MIA Chair of Honor Memorial.

(a) The POW-MIA Chair of Honor Memorial shall be funded by the Florida chapters of Rolling Thunder, Inc., without appropriation of state funds.

(b) Pursuant to s. 255.249(1), the Department of Management Services shall approve the design and placement of the POW-MIA Chair of Honor Memorial in the Capitol Complex. The Department of Management Services must consider recommendations from the Department of Veterans' Affairs, the Florida chapters of Rolling Thunder, Inc., and the Florida Historical Commission in determining the appropriate design and placement of the memorial. The Department of Management Services shall coordinate with the Division of Historical Resources of the Department of State regarding the memorial's design and placement subject to the division's powers and duties under s. 267.031.

Section 2. Section 265.111, Florida Statutes, is created to read:

265.111 Capitol Complex; monuments.—

(1) For purposes of this section, the term "monument" means a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021.

(2) The construction and placement of a monument on the premises of the Capitol Complex, as defined in s. 281.01, is

629070

prohibited unless authorized by general law and unless the design and placement of the monument is approved by the Department of Management Services after considering the recommendations of the Florida Historical Commission, pursuant to s. 267.0612(9). The Department of Management Services shall coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement subject to the division's powers and duties under s. 267.031.

(3) The Department of Management Services, in consultation with the Florida Historical Commission, shall set aside an area of the Capitol Complex, not including the State Capital Circle Office Complex, and dedicate a memorial garden on which authorized monuments shall be placed.

Section 3. Subsection (9) is added to section 267.0612, Florida Statutes, to read:

267.0612 Florida Historical Commission; creation; membership; powers and duties.—In order to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties, there is created within the Department of State the "Florida Historical Commission." The commission shall serve in an advisory capacity to the director of the Division of Historical Resources to assist the director in carrying out the purposes, duties, and responsibilities of the division, as specified in this chapter.

(9) The commission shall provide recommendations to the Department of Management Services on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111.

629070

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to monuments on the Capitol Complex; creating s. 265.0031, F.S.; providing legislative intent; defining the term "Capitol Complex"; establishing the POW-MIA Chair of Honor Memorial; authorizing the Florida chapters of Rolling Thunder, Inc., to fund the memorial; requiring the commission to consider recommendations of the Department of Veterans' Affairs, the Florida chapters of Rolling Thunder, Inc., and the Florida Historical Commission, regarding specific aspects of the memorial; requiring the Department of Management Services to coordinate with the Division of Historical Resources regarding design and placement; creating s. 265.111, F.S.; defining the term "monument"; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless authorized by general law and approved by the Department of Management Services; requiring the Department of Management Services to coordinate with the Division of Historical Resources regarding design and placement of a monument; requiring the Department of Management Services to set aside an area of the Capitol Complex

629070

for a memorial garden; establishing requirements for the memorial garden; amending s. 267.0612, F.S.; revising the powers and duties of the Florida Historical Commission to conform to changes made by the act; providing an effective date.

968080

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Smith) recommended the following:

Senate Amendment to Amendment (629070) (with title amendment)

Between lines 69 and 70

insert:

Section 4. The provisions of s. 265.111, Florida Statutes, as created by this act, do not apply to a monument constructed and placed on the premises of the Capitol Complex before July 1, 2014.

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

968080

And the title is amended as follows:

Delete line 103

and insert:

the act; providing for applicability; providing an effective date.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Hukill

583-02177-14 2014608c1

A bill to be entitled

An act relating to monuments on the Capitol Complex; creating s. 265.0031, F.S.; providing legislative intent; defining the term "Capitol Complex"; establishing the POW-MIA Chair of Honor Memorial; requiring the Florida chapters of Rolling Thunder, Inc., to fund the memorial; subjecting the memorial to approval by the Florida Historical Commission; requiring the commission to consider recommendations of the Department of Veterans' Affairs and the Florida chapters of Rolling Thunder, Inc., regarding specific aspects of the memorial; creating s. 265.111, F.S.; defining the term "monument"; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless authorized by general law; subjecting the design and placement of a monument to the approval of the Florida Historical Commission; requiring the Department of Management Services to submit recommendations to the Florida Historical Commission; requiring the Department of Management Services to set aside an area of the Capitol Complex for a memorial garden; establishing requirements for the memorial garden; amending s. 267.0612, F.S.; revising the powers and duties of the Florida Historical Commission to conform to changes made by the act; providing an effective date.

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

583-02177-14 2014608c1

Section 1. Section 265.0031, Florida Statutes, is created to read:

265.0031 POW-MIA Chair of Honor Memorial.—

(1) It is the intent of the Legislature to recognize and honor the sacrifices endured by members of the Armed Forces of the United States who were held as prisoners of war or remain missing in action.

(2) For purposes of this section, the term "Capitol Complex" has the same meaning as in s. 281.01.

(3) There is established the POW-MIA Chair of Honor Memorial.

(a) The POW-MIA Chair of Honor Memorial shall be funded by the Florida chapters of Rolling Thunder, Inc., without appropriation of state funds.

(b) Pursuant to s. 267.0612(9), the Florida Historical Commission shall approve the design and placement of the POW-MIA Chair of Honor Memorial in the Capitol Complex. In addition to recommendations from the Department of Management Services, the commission shall consider recommendations from the Department of Veterans' Affairs and the Florida chapters of Rolling Thunder, Inc., in determining the appropriate design and placement of the memorial.

Section 2. Section 265.111, Florida Statutes, is created to read:

265.111 Capitol Complex; monuments.—

(1) For purposes of this section, the term "monument" means a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or

event in Florida history.

(2) The construction and placement of a monument on the premises of the Capitol Complex, as defined in s. 281.01, is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the Florida Historical Commission, pursuant to s. 267.0612(9). The Department of Management Services shall submit recommendations to the Florida Historical Commission regarding the design and placement of an authorized monument.

(3) The Department of Management Services, in consultation with the Florida Historical Commission, shall set aside an area of the Capitol Complex and dedicate a memorial garden on which authorized monuments shall be placed. Except for historically authenticated monuments from the restoration of the Historic Capitol, monuments situated on the Capitol Complex, as of July 1, 2014, may be moved to the memorial garden as directed by the Florida Historical Commission. The memorial garden may not be placed in an area within 50 feet of the outer perimeter of the grounds surrounding the Historic Capitol.

Section 3. Subsection (9) is added to section 267.0612, Florida Statutes, to read:

267.0612 Florida Historical Commission; creation; membership; powers and duties.—In order to enhance public participation and involvement in the preservation and protection of the state’s historic and archaeological sites and properties, there is created within the Department of State the “Florida Historical Commission.” The commission shall serve in an advisory capacity to the director of the Division of Historical Resources to assist the director in carrying out the purposes,

duties, and responsibilities of the division, as specified in this chapter.

(9) The commission shall approve the design and placement of a monument authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111. Prior to approval, the commission shall consider the recommendations of the Department of Management Services regarding the design and placement of such a monument.

Section 4. 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)

Meeting Date

Topic Monuments

Bill Number 608 *(if applicable)*

Name Lisa Henning

Amendment Barcode 896144013 *(if applicable)*
by Brittan
96 8080

Job Title Director Political Affairs

Address 242 Office Plaza Dr. *Street*

Phone 850-766-8800

Tallahassee, FL 32301
City *State* *Zip*

E-mail fplegislative@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Amendment Florida Law Enforcement Memorial

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)

4-9-14
Meeting Date

Topic Capitol Monuments

Bill Number SB 608 *(if applicable)*

Name John Rivera

Amendment Barcode Amendment to 629070 *(if applicable)*

Job Title President of Florida and Miami-Dade PBA's

Address 300 E. Brevard St. *Street*

Phone 850-222-3329

City Tallahassee, FL State 32301 Zip

E-mail

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

Representing Florida Police Benevolent Association

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

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

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

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

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)

4-9-14
Meeting Date

Topic Capitol Monuments

Bill Number SB608 *(if applicable)*

Name David Murrell

Amendment Barcode Amendment to 629070 *(if applicable)*

Job Title Director of Legislative Services

Address 300 E. Brevard St. *Street*

Phone 850-222-3321

City Tallahassee, State FL Zip 32301

E-mail davidm@flpba.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Police Benevolent 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

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 26, 2014

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

Re: Senate Bill 608 – POW-MIA Chair of Honor Memorial

Dear Chairman Thrasher:

Senate Bill 608, relating to the POW-MIA Chair of Honor Memorial, has been referred to the Rules Committee. I am requesting your consideration to include SB 608 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee
Tamra Lyon, Administrative Assistant of the Rules Committee

REPLY TO:
☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
☐ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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/SM 368
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Simpson
SUBJECT:	Constitutional Convention/Single-Subject Requirement for Federal Legislation
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	McVaney	McVaney	GO	**Fav/CS**
3.	Davis	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SM 368 is an application to the United States Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and
- Require that the subject be clearly expressed in the bill's title.

The memorial also states that it is revoked and withdrawn if used for the purpose of calling a convention for any other purpose, and that it constitutes a continuing application until the legislatures of at least two-thirds of the states have made applications on the same subject.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call an amendments convention for the sole purpose of proposing a single subject amendment to the U.S. Constitution, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law; they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by two-thirds vote of both Houses of Congress.[1] Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.[2] Starting with the Bill of Rights in 1789, Congress has used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution have been approved by the states.[3]

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress to call an amendments convention.[4] Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention.

Article V further provides that the amendments will become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions "as the one or the other Mode of Ratification may be proposed by the Congress," Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.[5]

It has become accepted procedure, although not stated in the Constitution, that Congress may set time limits on the ratification process and specify when an amendment must be ratified by the requisite number of states to become valid. With several amendments, Congress stated that ratification must occur within 7 years after their proposal to become effective.[6] The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.[7]

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total

---

[1] U.S. CONST. art. V.
[2] *The Constitutional Amendment Process*, U.S, National Archives and Records Administration, http://www.archives.gov/federal-register/constitution (last visited February 4, 2014).
[3] Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012) (on file with the Senate Committee on Judiciary).
[4] U.S. CONST. art. V.
[5] Neale, *supra*, note 3, at 22.
[6] *Id.* at 2.
[7] *Dillon v. Gloss*, 256 U.S. 368 (1921).

number required by one application. Several states later rescinded their applications and the call for a convention dissipated.[8]

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. North Dakota was the first state to make application to Congress in 1975, followed by a succession of 30 other states over the years, ending with Missouri's application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.[9]

Single Subject Requirements

State Provisions

The majority of states limit legislation to a single subject in their state constitutions. In Florida, the State Constitution provides that "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."[10] According to the National Conference of State Legislatures, 41 states have similar single-subject requirements. Seven state constitutions contain no single-subject provisions, one state places the requirement in a joint rule, while one remaining state seems to imply in its constitution that that legislation should be limited to a single subject.[11]

Federal Provisions

Currently, there is no federal constitutional or statutory requirement that legislation be limited to a single subject. However, legislation calling for a single subject requirement was introduced in both Houses of Congress during the current 113th Congress. Entitled the "One Subject at a Time Act," the legislation provides, in part, that "Each bill or joint resolution shall embrace no more than one subject."[12] The bills, H.R. 2113 and S. 1664, have each been referred to a committee but neither has been scheduled for a hearing at this time. Similar legislation died in committee last year.[13]

III. Effect of Proposed Changes:

Senate Memorial 368 is an application to Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and

[8] James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 1005, 1009-10 (2007).
[9] *Id.* at 1010.
[10] FLA. CONST. art. III, s. 6.
[11] National Conference of State Legislatures, *"State Constitutional Provisions that Limit Bills to One Subject" (Single Subject Requirement)*. E-mail and attachment dated February 4, 2014, (on file with the Senate Committee on Judiciary).
[12] H.R. 2113 and S. 1664. H.R. 2113 is currently pending in the Constitution and Civil Justice Subcommittee in the House Judiciary Committee and S. 1664 has been referred to the Senate Committee on Rules and Administration. At this time, neither bill has received a committee hearing. Phone conversations conducted February 5, 2014, with the House Constitution Civil Justice Subcommittee and Senate Committee on Rules and Administration.
[13] The Library of Congress website, Thomas. http://thomas.loc.gov/cgi-bin/bdquery/D?d112:1:./temp/~bdTBk0:@@@X|/home/LegislativeData.php?n=BSS;c=112; http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SN03359:@@@L&summ2=m&#status. (last visited on February 5, 2014).

- Require that the subject be clearly expressed in the bill's title.

If the memorial is used for any purpose other than calling a convention to propose a single-subject amendment to the Constitution, the memorial is revoked and treated as though it was never passed. The memorial also provides that it is a continuing application in accordance with Article V until the legislatures of at least two-thirds of the states have made applications on the same subject.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call a single-subject amendments convention, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language will eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it will become an amendment to the U.S. Constitution. The amendment will state, "Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title."

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:

If an Article V amendments convention is called at some point in the future, the state may be responsible for the costs of sending delegates to the convention. Whether Congress or

the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is not known.

Diverse scholars have raised, but have not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention is limited in its focus or may be expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether the role of Congress is to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.[14]

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, which endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.[15]

VIII. Statutes Affected:

None.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on April 3, 2014:
The CS deletes a provision that the memorial supersedes all previous single-subject memorials and resolutions, and adds a provision that the memorial constitutes a continuing application.

[14] See the sources cited in footnotes 3 and 8 for an in-depth analysis of the issues.
[15] Neale, *supra* note 3, at 26.

B. Amendments:

None.

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

585-03743-14 2014368c1

Senate Memorial

A memorial to the Congress of the United States, applying to Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States to provide that every law enacted by Congress shall embrace only one subject, which shall be clearly expressed in its title.

WHEREAS, each measure before a legislative body should pass on its own merits without depending on legislative support for other unrelated measures to achieve the required number of votes for passage, and

WHEREAS, a single-subject constitutional provision addresses this concern by prohibiting a legislative body from enacting a law that embraces more than one subject, and

WHEREAS, 41 of the 50 states, including Florida, have a single-subject provision in their respective state constitutions, and the legislatures and citizens of these states have benefited from a single-subject requirement, and

WHEREAS, the Constitution of the United States is the supreme law of the United States of America, touching the lives of every citizen in the several states, but is missing this important provision, and

WHEREAS, our great country is deep in debt and Congress is currently searching for a solution, and

WHEREAS, a federal single-subject amendment would provide the means to limit pork barrel spending, control the phenomenon of legislating through riders, limit omnibus legislation produced by logrolling, prevent public surprise, and increase

585-03743-14 2014368c1

the institutional accountability of Congress and its members, and

WHEREAS, it is Florida's hope and desire that Congress will be able to conduct its business in a more productive, efficient, transparent, and less acrimonious way with a single-subject requirement, and

WHEREAS, Article V of the Constitution of the United States makes provision for amending the Constitution on the application of the legislatures of two-thirds of the several states, calling a convention for proposing amendments that shall be valid to all intents and purposes if ratified by the legislatures of three-fourths of the several states or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida, with all due respect, does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to provide that Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title.

(2) That this memorial is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and be retroactive to the date of passage, if it is used for the purpose of calling a convention or used in support of

conducting a convention to amend the Constitution of the United States for any purpose other than requiring that every law enacted by Congress embrace only one subject, which shall be clearly expressed in the title.

(3) That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the states have made applications on the same subject.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic _____ Bill Number SM 368 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

4-9-14
Meeting Date

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

Topic Constitutional Convention

Bill Number SB 368 *(if applicable)*

Name ~~Amy Datz~~ Amy Datz

Amendment Barcode _____ *(if applicable)*

Job Title Retired State employee

Address 1130 Overview Ave

Phone 850 322-7597

Street
Tallahassee FL 32303
City *State* *Zip*

E-mail amaliedatz@mac.com

Speaking: ☐ For ☑ Against ☐ Information

Representing AFSCME Retiree

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)

4/9/14
Meeting Date

Topic Single Subject amendment / article V

Bill Number CS/SM 368 *(if applicable)*

Name W Spider Webb Jr

Amendment Barcode *(if applicable)*

Job Title CEO & Founder

Address 267 John Knox Rd Suite 100
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 694 2607

E-mail SpiderW@SingleSubjectAmendment.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Single Subject amendment

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 372
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Senator Galvano
SUBJECT:	Developments of Regional Impact
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Pingree	Martin	ATD	**Fav/CS**
3.	Pingree	Kynoch	AP	**Fav/CS**
4.	Stearns	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 372 reduces the minimum population and density requirements for counties to qualify as a dense urban land area (DULA). Land development projects are exempt from development of regional impact (DRI) review if they are located in a DULA. This bill would designate an additional 7 counties and 20 municipalities as DULAs. The bill eliminates the adoption of an urban service area as criteria for designation for a DULA, with the exception of a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area. In such a county, the DULA DRI exemption only applies within an urban service area that has been adopted into the comprehensive plan.

The bill also exempts any proposed development located in a DULA from the DRI aggregation criteria.

The bill has an indeterminate, but insignificant fiscal impact.

II. Present Situation:

Development of Regional Impact Background

A DRI is defined in s. 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the DEO (the state land planning agency) to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[1] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in their local plans.[2] After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program in the past for various reasons.

DRI Review

All developments that meet the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a DULA, or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.[5] The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.[6] The DEO, a RPC, or the local government may request the Administration Commission to increase or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.[7] Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

---

[1] Section 380.07(2), F.S.
[2] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[3] Section 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] *See* the section "DRI Exemptions."
[6] Section 380.0651, F.S.
[7] Section 380.06(3), F.S.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.[8] A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a pre-application conference.[9] A developer or the RPC may also request other affected state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the pre-application conference, the RPC is to provide the developer with information about the DRI process and use the pre-application conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval. If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.[10]

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the pre-application conference with all parties, the developer may file an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[11]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.[12] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the

[8] Section 186.502, F.S.
[9] Section 380.06(7), F.S.
[10] *Id.*
[11] Section 380.06(10), F.S.
[12] Section 380.06(11), F.S.

proposed development.[13] The RPC is required to identify regional issues[14] and specifically examine whether:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans.
- The development will significantly impact adjacent jurisdictions.

In doing so, the RPC must consider whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[15]

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.[16] When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[17]

The DEO also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[18] Rule 73C-40, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the development's impact on:

- Hurricane preparedness;[19]
- Conservation of listed plant and wildlife resources;[20]
- Treatment of archaeological and historical resources;[21]
- Hazardous material usage, potable water, wastewater, and solid waste facilities;[22]
- Transportation;[23]
- Air quality;[24] and

[13] Section 380.06(12), F.S.
[14] Rule 73C-40.024, F.A.C., states in part: "In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order."
[15] Section 380.06(12)(a), F.S.
[16] Section 380.06(12)(b), F.S.
[17] *Id*.
[18] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.
[19] Rule 73C-40.0256, F.A.C.
[20] Rule 73C-40.041, F.A.C.
[21] Rule 73C-40.043, F.A.C.
[22] Rule 73C-40.044, F.A.C.
[23] Rule 73C-40.045, F.A.C.
[24] Rule 73C-40.046, F.A.C.

- Adequate housing.[25]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which the development is consistent with:

- Its comprehensive plan and land development regulations;
- The report and recommendations of the RPC; and
- The state comprehensive plan.[26]

Local governments are required by s. 163.3177(6)(f), F.S., to adopt a housing element in the local comprehensive plan that expresses principles, guidelines, standards, and strategies related to affordable housing for all current and anticipated future residents.

The local government must render a decision on an application for development within 30 days after the public hearing on the development. Within 45 days after a development order is rendered, the owner or developer of the property or the DEO may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[27] An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[28]

Aggregation

The Florida Statutes provide that the impacts of two or more purportedly separate developments that nonetheless share a unified plan of development should be aggregated during the DRI designation process.[29] The criteria for identifying projects subject to aggregation include whether:

- The same person owns or controls the developments;
- Common management exists controlling the form of physical development or disposition of the parcels of the developments;
- A reasonable closeness in time exists between the completion of 80 percent of one development and submission of the master plan for the other development;
- A master plan or series of plans or drawings exists that covers the developments; and
- A common advertising scheme or promotional plan is in effect for the developments.

Substantial Deviations

DRIs are designed to be built out over many years, which increases the likelihood that changes to the development will be necessary due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable

[25] Rule 73C-40.048, F.A.C.
[26] Section 380.06(13), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.
[27] Section 380.07(2), F.S.
[28] Section 163.3215, F.S.
[29] Section 380.0651(4), F.S.

likelihood of either additional regional impact or a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the DEO.[30] The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.[31]

Section 380.06(19), F.S., provides the specific criteria which constitute a substantial deviation and require a development to be subject to additional review.[32] The numerical standards are also automatically increased if a project is job-creating or located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development.[33] Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes are not substantial deviations.

DRI Exemptions

The Legislature has exempted many types of development from DRI review.[34] The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a DULA.[35] Currently, eight counties and 242 cities meet, or have met, the population and density criteria necessary to qualify as a DULA.[36] The exemption for projects within a DULA reflects state policy to encourage development within urban areas, the increased sophistication of local planning staffs and the progress that larger, urban counties and municipalities have made in the area of large-scale land use planning since the DRI program was instituted in 1972. Additionally, the Legislature has provided two alternative large-scale planning tools known as the sector plan[37] and rural land stewardship program.[38] Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

[30] Section 380.06(19)(e)1., F.S.
[31] *Id*.
[32] Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).
[33] Ch. 2011-139, L.O.F.; HB 7207 (2011).
[34] *See* s.380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.
[35] Section 380.06(29), F.S. (see section Dense Urban Land Areas).
[36] The following counties currently qualify as a DULA: Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Seminole. For a complete list of municipalities qualifying as a DULA see http://edr.state.fl.us/Content/local-government/reports/DULA-21June2013.pdf (last accessed January 2, 2014).
[37] Section 163.3245, F.S.
[38] Section 163.3248, F.S.

Dense Urban Land Areas

Under current law the following are exempt from DRI review as DULAs:

- Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
- Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan;
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan.[39]

The Florida Legislature's Office of Economic and Demographic Research (EDR) annually calculates the population and density criteria needed to determine which jurisdictions meet the density criteria to be a DULA by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates. The EDR submits a list of jurisdictions which meet the total population and density criteria to the DEO.[40]

Intergovernmental Coordination Element

Local comprehensive plans are required to have an intergovernmental coordination element,[41] and local governments are authorized to enter into intergovernmental agreements on how to handle the impacts of development. The intergovernmental coordination element must demonstrate consideration of the particular effects of the local plan upon the development of adjacent cities and counties, the region, or upon the state comprehensive plan.[42] The element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas. Local governments must include mechanisms that address the impacts of development proposed in the local comprehensive plan upon development in adjacent jurisdictions.[43] The element must also ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

The intergovernmental coordination element must provide for a dispute resolution process designed by the RPC for bringing intergovernmental disputes to closure in a timely manner. The statutory criteria require the dispute resolution process to provide for: voluntary meetings among the disputing parties; if those meetings fail to resolve the dispute, initiation of mandatory

[39] Section 380.24(a), F.S.
[40] *Id.*
[41] Section 163.3177(6)(h), F.S.
[42] Section 163.3177(6)(h)1., F.S.
[43] Section 163.3177(6)(h)3.a., F.S.

mediation or a similar process; if that process fails, initiation of arbitration or administrative or judicial action, where appropriate.[44]

III. Effect of Proposed Changes:

Section 1 amends s. 380.06(29), F.S., and deletes two criteria for the DULA exemption:

- Any proposed development within a county, including the municipalities located in the county that has an average of at least 1,000 people per square mile of land area and is located within an urban service area.
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan.

In addition, the bill expands the DULA exemption applicable to a development which is located in a county with a population of 1 million and is located in an urban service area adopted into a comprehensive plan so that the exemption would apply to any proposed development in within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile. The bill eliminates the urban service area designation as a criteria of the DULA exemption, with the exception of a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area. In such a county, the DULA DRI exemption only applies within an urban service area that has been adopted into the comprehensive plan.

Currently, eight counties and 242 municipalities satisfy the criteria for the DULA exemption. The bill would add seven additional counties and 20 additional municipalities.[45]

The bill also exempts any development that qualifies for an exemption from the DRI review under s. 380.06(29)(a), F.S., from the DRI aggregation criteria.

The bill also makes a technical change to the name of the United States Census Bureau.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[44] Section 186.509, F.S.

[45] The seven additional counties are: Brevard, Escambia, Lee, Manatee, Pasco, Sarasota, and Volusia.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 372 may reduce costs associated with the DRI review process for developers who wish to pursue development projects in a county or municipality that is newly designated as a DULA.

C. Government Sector Impact:

The impact on state and local governments is indeterminate, but expected to be insignificant. Increasing the number of local governments who are exempt from the DRI review process may reduce the workload of the DEO's staff and the staffs of local governments who review these projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 380.06 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 Appropriations on March 27, 2014:
The Committee Substitute:

- Limits the exemption from the DRI aggregation criteria set forth in s. 380.0651(4), F.S., to those developments that are exempt from DRI review because they are located in a DULA.
- Allows a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area to limit the DULA DRI exemption to the urban service area that has been adopted into the comprehensive plan.

- Exempts any development that qualifies for an exemption under s. 380.06, F.S., from the DRI aggregation criteria set forth in s. 380.0651(4), F.S.

B. Amendments:

None.

By the Committee on Appropriations; and Senator Galvano

576-03299-14 2014372c1

A bill to be entitled

An act relating to developments of regional impact; amending s. 380.06, F.S.; deleting certain exemptions for dense urban land areas; revising the exemption for any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile; exempting certain developments from certain statewide standards and guidelines; providing an effective date.

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

Section 1. Paragraph (a) of subsection (29) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

(a) The following are exempt from this section:

1. Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a ~~minimum~~ total population of at least 5,000; or

~~2. Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan;~~

~~3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban~~

576-03299-14 2014372c1

~~service area designated in the comprehensive plan; or~~

2.~~4.~~ Any proposed development within a county, including the municipalities located therein, which has an average population of at least 400 people per square mile and a population of at least 300,000, provided, however, that in a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area, the exemption shall only apply ~~and is located~~ within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1. and 2. ~~1.-4.~~ by using the most recent land area data from the decennial census conducted by the United States Census Bureau ~~of the Census~~ of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the office ~~of Economic and Demographic Research~~ shall determine the population density using the new jurisdictional boundaries ~~as~~ recorded in accordance with s. 171.091. The office ~~of Economic and Demographic Research~~ shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the total population and density criteria. The state land planning agency shall publish the list ~~of jurisdictions~~ on its Internet website within 7 days after the

list is received. The designation of jurisdictions that meet the criteria of subparagraphs 1. and 2. ~~1.-4.~~ is effective upon publication on the state land planning agency's Internet website. If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency shall maintain the municipality on the list and indicate the year the jurisdiction last met the criteria. However, any proposed development of regional impact not within the established boundaries of a municipality at the time the municipality last met the criteria must meet the requirements of this section until such time as the municipality as a whole meets the criteria. Any county that meets the criteria shall remain on the list in accordance with ~~the provisions of~~ this paragraph. Any jurisdiction that was placed on the dense urban land area list before June 2, 2011, shall remain on the list in accordance with ~~the provisions of~~ this paragraph.

3. A development that qualifies for an exemption under this paragraph is not subject to s. 380.0651(4).

Section 2. 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)

4/9/14
Meeting Date

Topic GROWTH MANAGEMENT/DRIs

Bill Number 372 *(if applicable)*

Name CHARLES PATTISON

Amendment Barcode *(if applicable)*

Job Title PRESIDENT

Address 308 N. MONROE *Street*

TALLAHASSEE *City* FL *State* 32301 *Zip*

Phone 222-6277

E-mail cpattison@1000fofl.org

Speaking: ☐ For ☑ Against ☐ Information

Representing 1000 FRIENDS OF FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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)

4/9/14
Meeting Date

Topic DRI

Bill Number 372 *(if applicable)*

Name DAVID CULLEN

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1674 UNIVERSITY PKWY #296
Street

SARASOTA FL 34243
City *State* *Zip*

Phone 941-323-2404

E-mail cullensea@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4.9.14
Meeting Date

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

Topic Developments of Regional Impact Bill Number 372 *(if applicable)*

Name Sarah Busk Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 215 S. Monroe St #602 Phone 222-8900

~~Street~~ Tallahassee FL 32301 E-mail sjb@cardenas partners.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 3, 2014

Senator John Thrasher
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

I respectfully request that CS/SB 372, Developments of Regional Impact, be scheduled for a hearing in the Committee on Rules at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: John Phelps
Tamra Lyon

REPLY TO:
☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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 1046
INTRODUCER:	Senator Galvano
SUBJECT:	Public Records/Motor Vehicle Crash Reports
DATE:	April 8, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Favorable**
2.	Kim	McVaney	GO	**Favorable**
3.	Everette	Phelps	RC	**Pre-meeting**

I. Summary:

SB 1046 expands a public record exemption restricting access to certain personal information contained in traffic crash reports obtained by the media.

Current law allows radio and television stations licensed by the Federal Communication Commission, newspapers qualified to publish legal notices, and certain free newspapers to request information contained in traffic crash reports. The bill requires and clarifies that these outlets may continue to makes requests of traffic crash reports. However, for a period of 60 days after a report is filed, a crash reports must be requested on an individual basis, and may not contain home, cellular, employment, or other telephone numbers, or the home or employment addresses of any of the parties involved in the crash.

The exemption is subject to repeal on October 2, 2019 unless reviewed and reenacted. Also provided is a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public records exemption and requires a two-thirds vote of the Legislature for passage.

II. Present Situation:

PIP Fraud

In a statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found that individuals called “runners” would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal

solicitations and the commission of a variety of frauds, including insurance fraud. These runners generally work for attorneys, auto body shops, or health care professionals.[1]

According to the Grand Jury report:

> Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.
>
> …..
>
> Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.[2]

Crash Reports

Currently, s. 316.066(2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

Closing access to crash reports for 60 days helps protect crash victims and their families from illegal personal injury protection (PIP) solicitation.

The law also provides several exceptions to this public records exemption. Crash reports may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.11 and

[1] The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at: http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument (Last viewed March 27, 2014).
[2] *Id*.

50.031, F.S., and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.[3]

The exemption does not prevent state and federal government agencies acting in furtherance of their duties from having access to information in crash reports.[4]

A person attempting to access a crash report within 60 days after the date the report is filed must present identification and file a written sworn statement stating that confidential and exempt information contained in a crash report will not be used for commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt. The vendor must provide a copy of the contract to the agency.[5]

The law does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information.[6]

Criminal Penalties for Illegal Use of Crash Report Information:

Current law provides criminal penalties for malfeasant use of crash reports.

- Section 316.066(3)(c), F.S., provides that anyone, knowing that he or she is not entitled to obtain confidential and exempt information in a crash report, who obtains or attempts to obtain such information commits a third degree felony.
- Section 316.066(3)(d), F.S., provides that anyone who knowingly uses confidential and exempt information in a crash report in violation of a filed written sworn statement or contractual agreement commits a third degree felony.
- Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.[7]
- Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment

[3] Section 316.066(2)(b), F.S. This section also provides that "the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes."
[4] Section 316.066(2)(c), F.S.
[5] Section 316.066(2)(d), F.S.
[6] Section 316.066(2)(e), F.S.
[7] Section 817.234(c), F.S.

directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.[8]

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.[9] The records of the legislative, executive, and judicial branches are specifically included.[10]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[11] guarantees every person's right to inspect and copy any state or local government public record[12] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[13]

Only the Legislature may create an exemption to public records requirements.[14] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[15] 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 provisions[16] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[17]

[8] Section 817.505(4), F.S.
[9] FLA CONST., art. I, s. 24(a).
[10] Id.
[11] Chapter 119, F.S.
[12] 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)).
[13] Section 119.07(1)(a), F.S.
[14] 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 (s*ee 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).
[15] FLA. CONST., art. I, s. 24(c).
[16] The bill may, however, contain multiple exemptions that relate to one subject.
[17] FLA. CONST., art. I, s. 24(c).

General Public Records Exemption for Victims of Crimes and Accidents

There is a general public records exemption for police reports protecting victims of crimes and accidents. This law provides that no one may use confidential or exempt information contained in accident reports to solicit victims or disclose that information to a third party who would solicit victims while records are confidential or exempt.[18] This prohibition does not apply to publication by the media.[19]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act), s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[20] 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.[21] 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.

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.[22] 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.[23]

The Act also requires specified questions to be considered during the review process.[24]

[18] Section. 119.105, F.S.
[19] Section. 119.105, F.S.
[20] 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.).
[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] *Id*.
[24] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

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.[25] 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.

Effect of Proposed Changes:

Section 1 amends the current public records exemption for crash reports by prohibiting radio and television stations, and newspapers qualified to publish legal notices, and certain free newspapers from obtaining the personal and work addresses and phone numbers of individuals involved in an accident. The media will not have access to this information for 60 days. The identities of the individuals in a crash report are not included in this exemption and remain accessible to the media.

In addition, traffic crash report requests must be filed on an individual basis. This measure would eliminate bulk public records requests being made for crash reports.

Under the bill, this public records exemption is subject to repeal on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides that personal contact information contained in a motor vehicle crash report be exempt from public records disclosure. It is public necessity that personal information by radio, television stations, and newspapers be restricted for the 60-day period after the filing date of traffic crash reports. The restriction is to combat widespread insurance fraud that occurs when information is unlawfully used to contact the parties involved in a crash. Moreover, the exemption prohibits the media's access to addresses and telephone numbers of the parties involved in crashes in order to protect the parties from those who would unlawfully solicit and make claims against their personal injury protection insurance policies.

This act shall take effect on the same date that CS/SB 876 or HB 865 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] 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.).

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I 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 substantially amends an exception to the current public records exemption, it expands the exemption and therefore it requires a two-third vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands an existing public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

The last paragraph in s. 316.066(2), F.S., and CS/SB 876 (which amends s. 316.066(2), F.S.) is paragraph "(e)." This bill is currently drafted to create s. 316.066(2)(g) and will have to be amended to become s. 316.066(2)(f).

The public necessity statement appears to be facially constitutional, in that the public necessity statement justifies, with specificity, the necessity for the exemption and the exemption is no broader that is than is necessary to accomplish its purpose.[26] The public necessity statement provides that this exemption is necessary in order to protect the public from insurance fraud and

[26] Article 1, Section 24, of the Florida Constitution provides in pertinent part:
The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), 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.

illicit solicitations, thus implying that unscrupulous actors are using lawful media access for illicit purposes. It is unclear if the public necessity statement is not legally sufficient because it does not explicitly articulate the nexus between the media's lawful access to information in crash reports and the unlawful use of confidential and exempt information by unscrupulous actors.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 316.066 of the Florida Statutes.

VIII. 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.

596104

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (2) of section 316.066, Florida Statutes, is amended to read:

316.066 Written reports of crashes.—

(2)

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance

596104

agents, and their insurers or insurers to which they have applied for coverage;~~,~~ persons under contract with such insurers to provide claims or underwriting information;~~,~~ prosecutorial authorities;~~,~~ law enforcement agencies;~~,~~ the Department of Transportation;~~,~~ county traffic operations;~~,~~ victim services programs;~~,~~ radio and television stations licensed by the Federal Communications Commission;~~,~~ newspapers qualified to publish legal notices under ss. 50.011 and 50.031;~~,~~ and free newspapers that are published on a weekly or daily basis, that have a minimum of 5,000 copies distributed by mail or by carrier as verified by a postal statement, by a notarized printer's statement of press run, or by industry-accepted auditors such as the Alliance for Audited Media, the Certified Audit of Circulations, or the Circulation Verification Council, and that have the intention of being of general distribution and circulation and that contain news of general interest with a minimum of four pages per publication ~~of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news~~. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

Section 2. The Legislature finds that a crash report that reveals the identity, home or employment telephone number, or home or employment address of a party involved in a crash, or

596104

other personal information concerning a party involved in the crash, and that is held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the date the report is filed. Public access to such information during that 60-day period by free newspapers published on a weekly or daily basis with a minimum of 5,000 copies distributed by mail or by carrier and having the intention of being of general distribution and circulation and containing news of general interest with a minimum of four pages per publication, should be restricted. The restricted access to personal information in a crash report helps prevent widespread insurance fraud that may occur when information is obtained by runners and websites claiming to be free newspapers in order to obtain information concerning parties involved in a crash and to use this information to contact the parties. The exemption from public records requirements protects the parties involved in a crash from those who would unlawfully solicit personal injury protection insurance claims. Accordingly, the Legislature finds that the harm to parties involved in a crash which could result from the release of personal information outweighs any minimal public benefit that would be derived from disclosure of that information to those claiming to be free newspapers that illegally compile victim identities. Therefore, it is the finding of the Legislature that such information must be made exempt from public disclosure.

Section 3. This act shall take effect on the same date that

596104

SB 876 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; amending 316.066, F.S.; requiring that crash reports be made available to certain newspapers; providing a statement of public necessity; providing a contingent effective date.

585894

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Rules (Galvano) recommended the following:

Senate Amendment

Delete lines 12 - 45
and insert:
Section 1. Paragraph (f) is added to subsection (2) of section 316.066, Florida Statutes, to read:
316.066 Written reports of crashes.—
(2)
(f) Radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of

585894

general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed must request such crash reports on an individual basis and may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash. This paragraph 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 a crash report that reveals the identity, home or employment telephone number, or home or employment address of, or other personal information concerning, a party involved in the crash and that is held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the date that the report is filed. Public access to such information during that 60-day period by radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, Florida Statutes, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, should be restricted to combat widespread insurance fraud that occurs when the information is unlawfully used to contact the parties involved in a crash. The exemption protects the parties involved

585894

in a crash from those who would unlawfully solicit personal injury protection insurance claims. Accordingly, the Legislature finds that the harm to parties involved in a crash which could result from the release of such information outweighs any minimal public benefit that would be derived from disclosure of that information to the public. Therefore, it is the finding of the Legislature that such information must be made exempt from public disclosure.

By Senator Galvano

26-01759-14 20141046__

A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (g) is added to subsection (2) of section 316.066, Florida Statutes, as amended by SB 876, 2014 Regular Session, to read:

316.066 Written reports of crashes.—

(2)

(g) Radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed must request such crash reports on an individual basis and may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash. This paragraph 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

26-01759-14 20141046__

through reenactment by the Legislature.

Section 2. The Legislature finds that the personal contact information contained in a motor vehicle crash report is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the report is filed and that it is a public necessity that access to such information during that 60-day period by newspapers and radio and television stations be restricted to combat widespread insurance fraud that occurs when the information is unlawfully used to contact the parties involved in a crash. The exemption prohibits access by newspapers and television and radio stations to the addresses and telephone numbers of the parties involved in a crash to protect the parties from those who would unlawfully solicit the parties to make claims against their personal injury protection insurance policies.

Section 3. This act shall take effect on the same date that SB 876 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-14
Meeting Date

Topic Motor Vehicle Crash Reports

Bill Number SB1046 *(if applicable)*

Name Richard Gentry

Amendment Barcode *(if applicable)*

Job Title

Address 2305 BRAEBURN CIR

Phone 251-1837

Street

TLH FL 32309

E-mail

City *State* *Zip*

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

Representing Economic Council of Palm Beach County

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

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

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

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

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)

4-9-14
Meeting Date

Topic PUBLIC RECORDS/MOTOR VEHICLE CRASH REPORTS Bill Number SB1046 *(if applicable)*

Name LOU MARINO Amendment Barcode _____ *(if applicable)*

Job Title DEPUTY SHERIFF

Address _____ Phone _____
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA SHERIFFS 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)

4/9/2014
Meeting Date

Topic _____ Bill Number 1046 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic Public Records/Motor vehicle crash reports

Bill Number 1046 *(if applicable)*

Name SAM MORLEY

Amendment Barcode 596104 *(if applicable)*

Job Title Gen. Counsel

Address 326 College Ave *Street*

Phone 850 212 4345

Tallahassee FL 32312 *City State Zip*

E-mail Smorley@Flpress.com

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

Amendment

Representing FLORIDA PRESS ASSOCIATION

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 4, 2014

Senator John Thrasher
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

I respectfully request that SB 1046, Public Records/Motor Vehicle Crash Reports, be scheduled for a hearing in the Committee on Rules at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: John Phelps
Tamra Lyon

REPLY TO:
☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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 808
INTRODUCER:	Governmental Oversight and Accountability Committee; Regulated Industries Committee and Senator Galvano
SUBJECT:	Public Records/Florida State Boxing Commission
DATE:	April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 808 creates a public-records exemption for a promoter's proprietary confidential business information held by the Florida State Boxing Commission. CS/CS/SB 808 is the public records companion bill to CS/CS/SB 810, which substantially amends ch. 458, F.S. This bill 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.

CS/CS/SB 808 requires a two-thirds vote of the membership of each house of the Legislature for passage under s. 24(c), Art. I, Florida State Constitution.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.

In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

> 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law,[1] which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., 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.

Unless specifically exempted, all agency[2] records are available for public inspection. The term "public records" is defined in s. 119.011(12), F.S., 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 the official business by any agency.

This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[3]

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

[1]Chapter 119, F.S.
[2]The term "agency" is defined in s. 119.011(2), F.S., 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."
[3] *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

than to the persons or entities designated in the statute.[4] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[5]

Only the Legislature is authorized to create exemptions to open government requirements.[6] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[7] A bill enacting an exemption[8] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[9]

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.[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] 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.[13]

The Act also requires specified questions to be considered during the review process.[14]

---

[4] Attorney General Opinion 85-62.
[5] *Williams v. City of Minneola,* 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[6] FLA. CONTS. Art I, s. 24(c).
[7] FLA. CONTS. Art I, s. 24(c).
[8] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[9] FLA. CONTS. 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 pursuant to 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 pursuant to s. 119.15(2), F.S.
[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.
[13] *Id*.
[14] 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?

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.[15] 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.

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (Commission) within the Department of Business and Professional Regulation (Department).

Section 548.006(3), F.S., provides the Commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match pursuant to ch. 548, F.S., and the rules adopted by the Commission.

The Commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.[16] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[17] This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter[18] of that match must file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires. Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;

- 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?

[15] 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.).

[16] Section 548.006(3), F.S.

[17] Section 548.002(2), F.S.

[18] Section 548.002(20), F.S., defines the term "promoter" to mean: any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

According to the Department, the current definition of "gross receipts" has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the Commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the Commission may require.[19]

Concessionaire must also file with the Commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the Commission may require.[20]

Any written report that must be filed with the Commission must be postmarked within 72 hours after the conclusion of the match with an additional five days allowed for mailing. According to the Department, the report is required to enable the Commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.[21]

These written reports must be accompanied with a tax payment in the amount of five percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event.

A concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the Commission. The security is required before licensure, license renewal, or before a match.[22]

CS/SB 810 (2014) Proposed Legislation Expanding the Role of the Boxing Commission

CS/SB 810 substantially amends ch. 548, F.S. in the following manner:

- Provides, modifies, and eliminates definitions relating to the Commission.
- Amends and clarifies the duties of the Commission's executive director.
- Eliminates the requirement that the Commission record all of its scheduled proceedings.
- Clarifies the Commission's jurisdiction.
- Eliminates the requirement that concessionaires, foreign co-promoters, and booking agents be licensed, and eliminates references to responsibilities related to concessionaries.

[19] Section 548.06(1), F.S.
[20] Section 548.06(3), F.S.
[21] Section 548.06(5), F.S.
[22] Section 548.015, F.S.

- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, constitutes an immediate serious danger to the health, safety, and welfare of the public and participants and results in the immediate suspension of the participant's license.
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act.
- Redefines how the Commission is to determine "gross receipts."
- Permits the promoter to apply to the Commission for authorization to issue more than five percent of seats in the house as complimentary tickets and not be included in gross receipts for post-event taxation purposes.
- Requires that the promoter keep a copy of certain records for a period of one year.
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and that the Commission has the right to audit a promoter's books and records, upon reasonable notice.
- Directs the Commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit.
- Directs the Commission to establish rules for imposing late fees in the event of taxes owed;
- Provides an emergency license suspension procedure.
- Provides that all hearings be held in accordance with the Administrative Procedure Act.

III. Effect of Proposed Changes:

This bill provides that the proprietary confidential business information provided in the written report after a match or obtained by the Commission in an audit of the promoter's books and records, is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill defines "proprietary confidential business information" as information controlled by the promoter, which a promoter intends to be private in that the disclosure of the information would cause harm to the promoter or its business operations. If a promoter discloses information pursuant to a statutory provision or an order of a court or administrative body, the disclosed information is still considered proprietary confidential business information. In addition, a private agreement providing that information will not be released to the public will give it proprietary confidential business information status.

The bill provides that proprietary confidential business information includes any of the following information:

(a) The number of ticket sales for a match.
(b) The amount of gross receipts after a match.
(c) Trade secrets as defined by s. 688.002, F.S.
(d) Business plans.
(e) Internal auditing controls and reports of internal auditors
(f) External auditors' reports.

The bill provides that information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

This bill provides that these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemption. The public necessity statement provides that the disclosure of proprietary confidential business information that could injure a promoter in the marketplace by giving the promoter's competitors insight into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The bill also provides that the Legislature's finding that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

Section 3 provides that this act shall take effect on the same date that CS/SB 810 or similar legislation takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Since SB 808 creates a new public-records exemption, it will require a two-thirds vote of each house of the Legislature for passage.

Statement of Public Necessity

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 2 of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

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:

The definition of "proprietary confidential business information" includes information that is "intended to be and is treated by the promoter providing such information as private in that the disclosure of the information would cause harm to the promoter or its business operations." This is a vague, subjective standard and it unclear how a records custodian will be able to discern a promoter's intent or when disclosure would harm a promoter's business. This bill also does not provide the records custodian any notice of when a promoter has ceased to treat a record as private, and is therefore no longer confidential and exempt.

This bill does not define the term "business plans."

This bill may be overly broad in that it states that information "that concerns" several categories of records are proprietary confidential business information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 548.062 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 26, 2014:
The CS/CS provides that "trade secrets" are defined pursuant to s. 688.002, F.S., and includes external auditing reports in as a category of proprietary business records.

The CS/CS eliminates security systems and information related to competitive interests as two categories of proprietary confidential business information.

CS by Regulated Industries Committee on March 13, 2014:
The committee substitute (CS) amends s. 548.062(1), F.S., to include proprietary confidential business information obtained by the Commission in an audit of the promoter's books and records.

The CS amends s. 548.062(1), F.S., to provide that the term "proprietary confidential business information" only includes the information delineated in paragraphs (a) through (g) of that subsection.

The CS also amends the Statement of Public Necessity in section 2 of the bill to also include proprietary confidential business information obtained by the Commission in an audit of the promoter's books and records.

The CS amends the contingent effective date to link the bill to SB 810.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Regulated Industries; and Senator Galvano

585-03261A-14 2014808c2

A bill to be entitled

An act relating to public records; creating s. 548.062, F.S.; providing an exemption from public records requirements for the information in the reports required to be submitted to the Florida State Boxing Commission by a promoter or obtained by the commission through audit of a promoter's records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 548.062, Florida Statutes, is created to read:

548.062 Public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public; and that concerns any of the following:

(a) The number of ticket sales for a match.

(b) The amount of gross receipts after a match.

(c) Trade secrets as defined in s. 688.002.

585-03261A-14 2014808c2

(d) Business plans.

(e) Internal auditing controls and reports of internal auditors.

(f) Reports of external auditors.

(2) Proprietary confidential business information provided in the written report required to be filed with the commission after a match or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

(3) This section 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 proprietary confidential business information be protected from disclosure. The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information. For these reasons, the Legislature declares that any proprietary confidential business information provided in the written report

that is required to be filed with the commission after a match or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06, Florida Statutes, is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic _____ Bill Number 808 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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 650
INTRODUCER:	Governmental Oversight and Accountability Committee and Judiciary Committee
SUBJECT:	OGSR/Inventories of an Estate or Elective Estate
DATE:	April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Munroe	Cibula		**JU SPB 7018 as introduced**
1.	McVaney	McVaney	GO	**Fav/CS**
2.	Munroe	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 650 removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court.

II. Present Situation:

The Florida Probate Code makes the following records filed in probate proceedings confidential and exempt from disclosure requirements under the public records laws:

- Estate inventories;
- Any inventory of an elective estate; and
- Any accounting of an estate.[1]

These exemptions will be repealed on October 2, 2014, unless they are reenacted by the Legislature.[2] In 2009, when the exemptions were enacted, the Legislature found that the exemptions were necessary because the "public disclosure of estate inventories and accountings . . . would produce undue harm to the heirs of the decedent or beneficiaries of the decedent's estate."[3]

[1] Section 733.604(1)(b), F.S.
[2] Chapter 2009-230, Laws of Fla.
[3] *Id.*

Personal Representative of an Estate

Subject to certain limitations, any person who is able to manage his or her own affairs and is a resident of Florida at the time of the death of the person whose estate is to be administered is qualified to act as personal representative in Florida.[4] A person who is not qualified to act as a personal representative is a person who has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.[5] A person who does not live in Florida may qualify as a personal representative if certain requirements are met.[6]

Estate Inventories

Within 60 days after issuance of letters of administration of an estate, a personal representative must file an inventory of the property of the estate.[7] The inventory of property must be verified, and an estimated fair market value of the items at the date of death of the decedent must be included.[8] The inventory may be disclosed only to the personal representative, the personal representative's attorney, other interested persons, or by court order upon a showing of good cause.[9] The personal representative must file a verified amended or supplementary inventory if he or she learns that property was left out of the original inventory or learns that the estimated value or description was erroneous or misleading.[10]

Elective Share of a Surviving Spouse

Unless waived, a surviving spouse may elect to take the elective share of a decedent's estate instead of assets provided to a surviving spouse through the decedent's will. The elective share generally includes 30 percent of the fair market value of all assets subject to the administration of the estate except for real property not located in Florida.[11]

[4] Section 733.302, F.S.
[5] Section 733.303(1), F.S.
[6] See s. 733.304, F.S.
[7] Fla. Prob. R. 5.340; *see s.* 733.604, F.S. In general, a personal representative of an estate is appointed upon the filing of letters of administration with the court. *See* 31 AM. JUR. 2D *Executors and Administrators* s. 237. As a prerequisite to the issuance of letters of administration in a probate proceeding, the following pleadings and papers must be filed with the court: petition for administration, will (if any), proof of will (if applicable), order appointing personal representative, oath of the representative, any required bond, and designation of and acceptance by a resident agent, are filed. *See* Henry P. Trawick, Jr., REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, 2010, s. 5:6 *Issuance of letters of administration* (2009-10 ed.).
[8] Section 733.604(2), F.S.
[9] *Id.*
[10] Section 733.604(2), F.S.
[11] Section 732.2065, F.S.; *see* Henry P. Trawick, Jr., Trawick, REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, s. 5:6 *Elective Share* (2009-10 ed.).

Estate Accountings

The Florida Probate Rules specify requirements for the contents and accounting standards for a fiduciary accounting that must be verified and filed in a probate proceeding.[12] The content includes:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration, and
- A schedule of assets at the end of the accounting period.

Public Records Requirements

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.[13] The records of the legislative, executive, and judicial branches are specifically included.[14]

Only the Legislature may create an exemption to public records requirements.[15] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[16] 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 provisions[17] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[18]

Open Government Sunset Review Act

The Open Government Sunset Review Act[19] provides for the systematic review of an exemption from the Public Records Act in the 5th year after its enactment. The act states that an exemption may be maintained only if it serves an identifiable public purpose and if the exemption 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 if 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.[21] An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

[12] Fla. Prob. R. 5.346.
[13] FLA. CONST. art. I, s. 24(a).
[14] *Id.*
[15] FLA. CONST. art. I, s. 24(c).
[16] FLA. CONST. art. I, s. 24(c).
[17] The bill, however, may contain multiple exemptions that relate to one subject.
[18] FLA. CONST. art. I, s. 24(c).
[19] Section 119.15, F.S.
[20] Section 119.15(6)(b), F.S.
[21] *Id.*

- 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 the safety of such individuals; or
- 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 would injure the affected entity in the marketplace.[22]

The act also requires the Legislature in reviewing an exemption to consider several questions that go to the scope, public purpose, and necessity of the exemption.[23]

Exemptions Under Review

During the interim before the 2014 Session, the staff of the Judiciary Committee reviewed the exemptions for estate inventories, inventories of elective estates, and estate accountings. The review was conducted by a series of questions to and responses from the Real Property, Probate, and Trust Law Section of The Florida Bar.

The questions that committee staff submitted to the section included:

- What specific records are affected by the exemptions?
- Who do the exemptions uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemptions?
- Can the information contained in the confidential records be readily obtained by alternative means?
- What is the continued necessity for the exemptions?
- Were any particular incidents the impetus for the creation of the exemptions? If yes, what type of information was disclosed, and how did the disclosure cause harm to another person? If no particular incidents were the impetus, please explain how the disclosure of the information could be used to harm another.
- Has anything changed since the exemptions were adopted which diminishes the need for their continued existence?
- Can an exemption be narrowed to disclose more information without affecting the identifiable purpose or goal of the exemption?
- Is there any reason to believe that the general public has a need to access the information protected by an exemption?

As a result of the review, committee staff found that a public purpose will be served by saving the exemptions from repeal.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result,

[22] *Id.*
[23] Section 119.15(6)(a), F.S.

the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore, it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The continued existence of the public records exemptions reenacted by the bill may protect heirs or beneficiaries of a decedent's estate from being targeted for fraud or theft.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 733.604, Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:
The CS clarifies that the financial accountings filed with the clerk of court in a probate proceeding are confidential and exempt from disclosure requirements under public records laws.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Judiciary

585-02562-14 2014650c1

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 733.604, F.S., which provides exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed with the clerk of court in an estate proceeding; saving the exemptions from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (1) of section 733.604, Florida Statutes, is amended to read:

733.604 Inventories and accountings; public records exemptions.—

(1)(a) Unless an inventory has been previously filed, a personal representative shall file a verified inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death.

(b)1. Any inventory of an estate, whether initial, amended, or supplementary, filed with the clerk of the court in conjunction with the administration of an estate is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any inventory of an elective estate, whether initial, amended, or supplementary, filed with the clerk of the court in conjunction with an election made in accordance with part II of chapter 732 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Any accounting, whether interim, final, amended, or supplementary, filed with the clerk of court in an estate proceeding is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Any inventory or accounting made confidential and exempt by subparagraph 1., subparagraph 2., or subparagraph 3. shall be disclosed by the custodian for inspection or copying:

a. To the personal representative;

b. To the personal representative's attorney;

c. To an interested person as defined in s. 731.201; or

d. By court order upon a showing of good cause.

5. These exemptions apply to any inventory or accounting filed before, on, or after July 1, 2009.

~~6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 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:	SB 566
INTRODUCER:	Senator Lee
SUBJECT:	Florida Bright Futures Scholarship Program
DATE:	April 1, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Favorable**
2.	Graf	Phelps	RC	**Favorable**

I. Summary:

SB 566 modifies student community service requirements affecting student eligibility for the Florida Bright Futures Scholarship Program awards, including clarifying that community service work means volunteer service work, expanding the permissible activities that students can participate in to meet the volunteer service work requirement, and placing parameters on such activities.

Specifically, the bill:

- Expands service work areas beyond social areas of interest to include civic issue or a professional area of interest.
- Requires students to develop a plan for personal involvement in addressing the issue or learning about the issue in addition to reflecting on such experience through papers or presentations.
- Provides accountability requirements for students' service work.
- Prohibits students from receiving compensation or academic credit for the volunteer service work.

Additionally, the bill specifies that volunteer service work may include, but is not limited to, the following additional activities:

- Internship with a business or government entity,
- Work for a nonprofit community service organization, or
- Activity on behalf of a candidate for public office.

The volunteer service hours must be documented in writing and signed by the student, the student's parent or guardian, and a representative of the organization where the student volunteered.

The bill takes effect on July 1, 2014.

II. Present Situation:

The Florida Bright Futures Scholarship Program (Program) is a primarily lottery-funded scholarship program to reward Florida high school graduates merit recognition for high academic achievement by providing the graduates, scholarships to pursue postsecondary education at eligible public and private postsecondary institutions in Florida within three years after graduating from high school.[1] The Department of Education (DOE) administers the Program in accordance with rules and procedures adopted by the State Board of Education.[2]

The Bright Futures Scholarship Program consists of three types of awards:[3]

- Florida Academic Scholarship (FAS),
- Florida Medallion Scholarship (FMS), and
- Florida Gold Seal Vocational Scholarship (FGSV).

To be eligible to receive Program award, students must meet the general eligibility criteria[4] and specific academic and community service work requirements.[5] The community service work must be approved by the district school board, the administrators of a nonpublic school, or the DOE for home education program students.[6]

To fulfill the community service work requirement for FAS, students graduating in the 2011-2012 academic year and each year thereafter, must perform at least 100 hours of community service work, identify a social problem of interest, develop a plan for personal involvement in addressing the problem, and reflect on such experience through papers or presentations.[7] The community service work requirement for the FMS and FGSV is the same as the requirement for FAS except for the number of community service work hours that FMS and FGSV students must volunteer. FMS students must perform a minimum of 75 hours of community service work[8] and FGSV students must perform at least 30 hours of community service work[9].

III. Effect of Proposed Changes:

SB 566 modifies student community service requirements affecting student eligibility for the Florida Academic Scholarship (FAS), Florida Medallion Scholarship (FMS), and Florida Gold Seal Vocational Scholarship (FGSV) awards, including clarifying that community service work means volunteer service work, expanding the permissible activities that students can participate in to meet the volunteer service work requirement, and placing parameters on such activities.

Specifically, the bill:

- Expands service work areas beyond social areas of interest to include civic issue or a professional area of interest.

[1] Section 1009.53(1), F.S.
[2] Section 1009.53(3), F.S.
[3] Section 1009.53(2), F.S.
[4] Section 1009.531, F.S.
[5] Sections 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.
[6] Sections 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.
[7] Sections 1009.534(1), F.S.
[8] Section 1009.535(1), F.S.
[9] Section 1009.536(1)(e), F.S.

- Requires students to develop a plan for personal involvement in addressing the issue or learning about the issue in addition to reflecting on such experience through papers or presentations.
- Provides accountability requirements for students' service work.
- Prohibits students from receiving compensation or academic credit for the volunteer service work.

Additionally, the bill specifies that volunteer service work may include, but is not limited to, the following additional activities:

- Internship with a business or government entity,
- Work for a nonprofit community service organization, or
- Activity on behalf of a candidate for public office.

The volunteer service hours must be documented in writing and signed by the student, the student's parent or guardian, and a representative of the organization where the student volunteered.

The bill takes effect on 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.534, 1009.535, and 1009.536.

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 Lee

24-00229D-14 2014566__

A bill to be entitled

An act relating to the Florida Bright Futures Scholarship Program; amending ss. 1009.534, 1009.535, and 1009.536, F.S.; requiring a student, as a prerequisite for the Florida Academic Scholars award, the Florida Medallion Scholars award, or the Florida Gold Seal Vocational Scholars award, to identify a social or civic issue or a professional area of interest and develop a plan for his or her personal involvement in addressing the issue or learning about the area; prohibiting the student from receiving remuneration or academic credit for the volunteer service work performed; providing examples of volunteer service work; requiring that the hours of volunteer service work performed be documented in writing and the document be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the volunteer service work; deleting obsolete provisions; providing an effective date.

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

Section 1. Subsection (1) of section 1009.534, Florida Statutes, is amended to read:

1009.534 Florida Academic Scholars award.—

(1) A student is eligible for a Florida Academic Scholars award if he or she ~~the student~~ meets the general eligibility requirements for the Florida Bright Futures Scholarship Program

24-00229D-14 2014566__

and ~~the student~~:

(a) Has achieved a 3.5 weighted grade point average as calculated pursuant to s. 1009.531, or its equivalent, in high school courses that are designated by the State Board of Education as college-preparatory academic courses~~,~~ and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(a) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(b) Has attended a home education program according to s. 1002.41 during grades 11 and 12, ~~or~~ has completed the International Baccalaureate curriculum but failed to earn the International Baccalaureate Diploma, or has completed the Advanced International Certificate of Education curriculum but failed to earn the Advanced International Certificate of Education Diploma, and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(a) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(c) Has been awarded an International Baccalaureate Diploma from the International Baccalaureate Office or an Advanced International Certificate of Education Diploma from the University of Cambridge International Examinations Office;

(d) Has been recognized by the merit or achievement programs of the National Merit Scholarship Corporation as a

scholar or finalist; or

(e) Has been recognized by the National Hispanic Recognition Program as a scholar recipient.

The ~~A~~ student must complete a program of volunteer ~~community~~ service work, as approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students, which must ~~shall~~ include a minimum of 75 hours of service work for high school students graduating in the 2010-2011 academic year and 100 hours of service work for high school students graduating in the 2011-2012 academic year and thereafter. The student ~~, and~~ must identify a social or civic issue or a professional area ~~problem~~ that interests him or her, develop a plan for his or her personal involvement in addressing the issue or learning about the area ~~problem~~, and, through papers or other presentations, evaluate and reflect upon his or her experience. The student may not receive remuneration or academic credit for the volunteer service work performed. Such work may include, but is not limited to, a business or government internship, work for a nonprofit community service organization, or activity on behalf of a candidate for public office. The hours of service work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the service work.

Section 2. Subsection (1) of section 1009.535, Florida Statutes, is amended to read:

1009.535 Florida Medallion Scholars award.—

(1) A student is eligible for a Florida Medallion Scholars award if he or she ~~the student~~ meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and ~~the student~~:

(a) Has achieved a weighted grade point average of 3.0 as calculated pursuant to s. 1009.531, or the equivalent, in high school courses that are designated by the State Board of Education as college-preparatory academic courses~~;~~ and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(b) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(b) Has completed the International Baccalaureate curriculum but failed to earn the International Baccalaureate Diploma or has completed the Advanced International Certificate of Education curriculum but failed to earn the Advanced International Certificate of Education Diploma, and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(b) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(c) Has attended a home education program according to s. 1002.41 during grades 11 and 12 and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(b) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered

Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program, if the student's parent cannot document a college-preparatory curriculum as described in paragraph (a);

(d) Has been recognized by the merit or achievement program of the National Merit Scholarship Corporation as a scholar or finalist but has not completed the ~~a~~ program of volunteer ~~community~~ service work required under ~~as provided in~~ s. 1009.534; or

(e) Has been recognized by the National Hispanic Recognition Program as a scholar, but has not completed the ~~a~~ program of volunteer ~~community~~ service work required under ~~as provided in~~ s. 1009.534.

The ~~A high school~~ student graduating in the 2011-2012 academic year and thereafter must complete at least 75 hours ~~a program~~ of volunteer ~~community~~ service work approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students. The student~~, which shall include a minimum of 75 hours of service work, and~~ must identify a social or civic issue or professional area ~~problem~~ that interests him or her, develop a plan for his or her personal involvement in addressing the issue or learning about the area ~~problem~~, and, through papers or other presentations, evaluate and reflect upon his or her experience. The student may not receive remuneration or academic credit for the volunteer service work performed. Such work may include, but is not limited to, a business or government internship, work for a nonprofit community service organization, or activity on

behalf of a candidate for public office. The hours of service work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the service work.

Section 3. Subsection (1) of section 1009.536, Florida Statutes, is amended to read:

1009.536 Florida Gold Seal Vocational Scholars award.—The Florida Gold Seal Vocational Scholars award is created within the Florida Bright Futures Scholarship Program to recognize and reward academic achievement and career preparation by high school students who wish to continue their education.

(1) A student is eligible for a Florida Gold Seal Vocational Scholars award if he or she ~~the student~~ meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and ~~the student~~:

(a) Completes the secondary school portion of a sequential program of studies that requires at least three secondary school career credits. On-the-job training may not be substituted for any of the three required career credits.

(b) Demonstrates readiness for postsecondary education by earning a passing score on the Florida College Entry Level Placement Test or its equivalent as identified by the Department of Education.

(c) Earns a minimum cumulative weighted grade point average of 3.0, as calculated pursuant to s. 1009.531, on all subjects required for a standard high school diploma, excluding elective courses.

(d) Earns a minimum unweighted grade point average of 3.5

on a 4.0 scale for secondary career courses that compose ~~comprising~~ the career program.

(e) Beginning with high school students graduating in the 2011-2012 academic year and thereafter, completes at least 30 hours ~~a program~~ of volunteer ~~community~~ service work approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students. The student must identify~~, which shall include a minimum of 30 hours of service work, and identifies~~ a social or civic issue or a professional area ~~problem~~ that interests him or her, develop ~~develops~~ a plan for his or her personal involvement in addressing the issue or learning about the area ~~problem~~, and, through papers or other presentations, evaluate ~~evaluates~~ and reflect ~~reflects~~ upon his or her experience. The student may not receive remuneration or academic credit for the volunteer service work performed. Such work may include, but is not limited to, a business or government internship, work for a nonprofit community service organization, or activity on behalf of a candidate for public office. The hours of service work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the service work.

Section 4. 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)

4/9
Meeting Date

Topic Financial Literacy

Bill Number 566 *(if applicable)*

Name Adam Giery (Geer-e')

Amendment Barcode *(if applicable)*

Job Title Dir of Policy

Address 136 South Bronough
Street

Phone

E-mail

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

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)

4-9-14
Meeting Date

Topic BRIGHT FUTURES

Bill Number SB 566 *(if applicable)*

Name RICHARD GENTRY

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2305 BRAEBURN CIR.
Street

Phone 251-837

TLH FL 32309
City *State* *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Economic Council of Palm Bch. County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

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/CS/CS/SB 602
INTRODUCER:	Rules Committee; Judiciary Committee; Ethics and Elections Committee; and Senator Latvala
SUBJECT:	Residency of Candidates and Public Officers
DATE:	April 10, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	Davis	Cibula	JU	**Fav/CS**
3.	Fox	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/CS/SB 602 adopts standards similar to those in recently-enacted Joint Rule 7 dealing with residency for legislators; it clarifies what the term "residence" means for candidates and public officers in meeting constitutional and statutory residency requirements. The bill provides a non-exhaustive list of factors that a court may consider in determining where a candidate or officer resides for purposes of residency requirements that apply upon qualifying as a candidate (regardless of whether the person is seeking partisan office) or upon taking office.

The bill specifically excludes members of the Legislature who are covered by the Joint Rule.

The bill takes effect on January 1, 2015.

II. Present Situation:

The Florida Constitution and Florida Statutes contain various provisions requiring that certain public officers "reside" in a prescribed geographic area. Some of the residence requirements apply at the time that a person qualifies as a candidate for that office, while others apply only once a person takes office. For example, the Florida Constitution specifies that, unless otherwise

provided in county charter, the counties must be divided into districts and that "One commissioner residing in each district shall be elected as provided by law."[1]

Currently, there is no definition of the term "residence" in the Florida Constitution or Florida Statutes that pertains to a candidate for office or a person once elected to office. However, over the past 100 years, the courts have consistently opined that, for purposes of residence requirements, a person's residence is his or her domicile.[2] "Domicile" is a legal term of art. The courts have explained domicile as follows:

> One can have only one domicile.[3] Legal residence, or domicile, means a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.[4] Legal residence consists of the concurrence of both fact and intention. In terms of establishing residence, the bona fides of the intention is a highly significant factor.[5] Historically, the place where a married person's family resides is generally deemed to be his legal residence. However, this presumption can be overcome by other circumstances.[6] Absence from one's current domicile or legal residence without the intent to abandon it does not result in the obtainment of a new domicile at wherever one might be presently located, even where the absence may be for an extended period of time.[7] Establishment of residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject.[8]

Some of the factors that have been considered by the courts are:

- selling the home where one was previously domiciled;[9]
- transferring one's bank accounts to where one maintains a residence;[10]
- maintaining a residence with one's family;[11]
- where one conducts business affairs;[12]
- where one leases an apartment;[13]
- where one plans the construction of a new home;[14]
- where one registers as a voter;[15]

---

[1] FLA. CONST. Article VIII, s. 1(e).
[2] "The rule is well settled that the terms 'residence,' 'residing,' or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of 'legal residence'; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence." *Herron v. Passailaigue*, 110 So. 539, 543 (Fla. 1926).
[3] *Minick v. Minick*, 111. Fla. 469, (Fla. 1933).
[4] *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).
[5] *Id.*
[6] *Smith v. Croom*, 7 Fla. 81 (Fla. 1857).
[7] *See e.g. Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955); *Wade v. Wade*, 113 So. 374 (Fla. 1927); and *Dennis v. State*, 17 Fla. 389 (1879).
[8] *Wade v. Wade, 113 So. 374, 376 (Fla. 1927).*
[9] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).
[10] *Id.*
[11] *See id.*; *see also Smith v. Croom*, 7 Fla. 81 (1857).
[12] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).
[13] *See Frank v. Frank*, 75 So. 2d 282 (Fla. 1954).
[14] *See Biederman v. Cheatham*, 161 So. 2d 538 (Fla. 2d DCA 1964).
[15] *See* Op. Atty. Gen. 063-31 (March 20, 1963).

- where one maintains a homestead exemption;[16]
- where one has identified the residence on his or her driver's license or other government documents;[17]
- where one receives mail and correspondence;
- where one customarily resides;[18]
- whether the structure has the normal features of a home;[19] and
- statements made indicating intention to move to the district.[20]

In essence, any evidence that would indicate that one has adopted a particular location as one's home and the "chief seat of [one's] affairs and interests" would be instrumental in proving permanent residency when combined with one's intent to make that location one's permanent residence.[21] Although some authorities suggest that factors such as where one possesses and exercises political rights might be given less weight,[22] the better course indicates that all the evidence should be weighed in the totality of the circumstances.[23]

Failure to maintain the legal residence required results in a vacancy in office.[24] The Legislature has codified Article X, s. 3, Fla. Const., and provided a mechanism to address such vacancies.[25] Specifically, if an officer fails to maintain the residence required of him or her by law, the Governor is required to file an Executive Order with the Secretary of State setting forth the facts which give rise to the vacancy.[26] The office shall be considered vacant as of the date specified in the Executive Order or, in the absence of such a date, as of the date the order is filed with the Secretary of State. The office would then be filled as provided by law.[27]

Governor and Cabinet Members

The Florida Constitution provides as follows with respect to the election of the Governor and Florida Cabinet members:

> …When elected, the governor, lieutenant governor, and each cabinet member must be an elector not less than thirty years of age who has resided in the state for the preceding seven years. The attorney general must have been a member of the bar of Florida for the preceding five years. No person who has, or but for resignation would have, served as governor or acting governor for more than six

[16] *Weiler v. Weiler*, 861 So. 2d 472, 477 (Fla. 5th DCA 2003).
[17] *See id.*
[18] *See id.*
[19] *See Perez v. Marti*, 770 So. 2d 284 (Fla. 3d DCA 2000).
[20] *See Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981) and *Butterworth v. Espey*, 565 So. 2d 398 (Fla. 2d DCA 1990).
[21] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).
[22] *Smith v. Croom*, 7 Fla. 81, 159 (1857).
[23] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).
[24] Article X, s. 3, Fla. Const., provides, "Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, ***or failure to maintain the residence required when elected or appointed***, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term."(Emphasis supplied.)
[25] Section 114.01, F.S.
[26] Section 114.01(2), F.S.
[27] Section 114.04, F.S.

> years in two consecutive terms shall be elected governor for the succeeding term.[28]

In addition, the statutes require the governor and members of the cabinet to "reside" in Tallahassee.[29] Failure to do so, in the case of cabinet members, results in a statutory vacancy in office.[30]

The validity of these additional statutory, "residency" requirements is suspect. The Florida Supreme Court has "consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements"[31] (emphasis added). In State v. Grassi[32], the Supreme Court invalidated a statute requiring a county commission candidate to be a resident of the district to which he or she seeks election *at the time of qualifying*. Because the constitution already provided that county commissioners reside in their district *at the time of election*, the Grassi court found that the statute created an unconstitutional, additional residency requirement. Similarly, the statutes requiring the governor and cabinet members to reside in Tallahassee appear to impose qualification requirements in addition to those provided for in the constitution (the governor and cabinet members be at least 30 years of age and residents of the state for at least 7 years at the time of election). Notwithstanding, a court inclined to uphold the constitutionality of these provisions might take the position that they do not require "domicile" in the traditional residency sense, but rather merely impose merely temporary "living conditions" necessary to the efficient operation of state government.

III. Effect of Proposed Changes:

The bill creates two new statutes codifying the criteria used by courts to determine whether a candidate or state officer is complying with residency requirements. Newly created s. 99.0125, F.S., applies to all candidate residence requirements regardless of whether the office sought is partisan.[33] Newly created s. 111.015, F.S., applies to residence requirements once a person assumes office. Both new sections establish statutory guidance for determining whether a candidate or officer is a resident of the geographic area. Specifically, the bill states that a person may have only one domicile and that the address of a person's domicile must be used to determine whether the residence requirement is satisfied. The building claimed as the domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes. The bill provides a non-exhaustive list of factors that may be considered in determining whether a residence requirement is satisfied. Those factors are:

- A formal declaration of domicile in the public records of the county;

[28] Art. IV, s. 5(b), FLA CONST.
[29] Sections 14.01, 16.01, 17.02, and 19.23, F.S.
[30] Section 114.03, F.S.
[31] *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988), *quoting*, *State ex. rel Askew v. Thomas*, 293 So.2d 40, 42 (Fla. 1974).
[32] *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988).
[33] Historically, courts have been reluctant to insert themselves into the political realm of whether a member can occupy a seat. Article III, s. 2, Fla. Const., provides that "Each house of the Legislature is the sole judge of the qualifications, election, and returns of its members..." As such, complaints concerning residence of a member of the Legislature should be sent to each house pursuant to its rules. Those complaints would be governed by Florida's Constitution, the Joint Rules of the Florida Legislature, and the rules of the respective house.

- A statement, whether oral or written, indicating the intention to establish a place as his or her domicile;
- Whether he or she transferred the title to his or her previous residence;
- The address at which he or she claims a homestead exemption;
- An address at which he or she has purchased, rented, or leased property;
- The address where he or she plans to build a new home;
- The amount of time that he or she spends at property he or she owns, leases, or rents;
- Proof of payment for, and usage activity of, utilities at property owned by the candidate or public officer;
- The address at which he or she receives mail and correspondence;
- The address provided to register his or her dependent children for school;
- The address of his or her spouse or immediate family members;
- The physical address of his or her employment;
- Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated;
- The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration;
- The address on his or her valid Florida driver license issued under s. 322.18, F.S., valid Florida identification card issued under s. 322.051, F.S., or any other license required by law;
- The address on the title to, or a certificate of registration of, his or her motor vehicle;
- The address listed on filed federal income tax returns;
- The location where his or her bank statements and checking accounts are registered;
- A request made to a federal, state, or local government agency to update or change his or her address; and
- Whether he or she has relinquished a license or permit held in another jurisdiction.

Additionally, the bill provides that active duty military members do not automatically establish or abandon domicile in the state of Florida solely by virtue of where he or she is stationed. However, the bill does not impair the right of active duty military members to establish a new domicile.

Further, the bill clarifies that the governor and members of the cabinet are not required to establish a new domicile in Tallahassee when they're elected, for purposes of meeting statutory residency requirements.

Finally, the bill clarifies that it does not apply to members of the Legislature in accordance with s. 2, Article III of the State Constitution. That provision states that "Each house shall be the sole judge of the qualifications, elections, and returns of its members…"[34] On March 4, 2014, the opening day of the legislative session, the Senate and House of Representatives adopted Joint Rule Seven, Qualifications of Members, which establishes residency requirements for the members of the Legislature.

The bill takes effect January 1, 2015.

[34] FLA. CONST. Article III, s. 2.

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 issue might be raised that this legislation imposes additional residency requirements on candidates which are not required by the State Constitution. The Florida Supreme Court held in *State v. Grassi*[35] that the Legislature is prohibited from imposing any additional qualifications on a candidate beyond what is required in the State Constitution. In response, it could be asserted that this bill only codifies existing case law and that the bill does not actually place any residency requirements on a candidate; it provides factors that may be considered in determining whether a candidate or public officer satisfies a residency requirement.

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.

[35] *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 99.0125, and 111.015.

This bill amends the following sections of the Florida Statutes: 14.01, 16.01, 17.02, 19.23, and 114.03.

IX. Additional Information:

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

CS/CS/CS by Rules on April 9, 2014:
The committee substitute differs from the prior committee substitute in that it clarifies that the governor and cabinet members need not be domiciled in Tallahassee.

CS/CS by Judiciary on March 25, 2014:
The CS/CS contains a new provision in section 3 which provides that "In accordance with s. 2, Article III of the State Constitution, this act does not apply to members of the Legislature."

CS by Ethics and Elections on March 3, 2014:
The committee substitute clarifies that active duty military members do not automatically establish or abandon domicile in the state of Florida ***solely*** by virtue of where he or she is stationed.

B. Amendments:

None.

442740

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 134 and 135
insert:

Section 3. Section 14.01, Florida Statutes, is amended to read:

14.01 Governor; residence; office; authority to protect life, liberty, and property.—

(a) The Governor shall reside at the head of government, and the Governor's office shall be in the capitol. The Governor may have such other offices within the state as he or she may

deem necessary. The Governor may employ as many persons as he or she, in his or her discretion, may deem necessary to procure and secure protection to life, liberty, and property of the inhabitants of the state, also to protect the property of the state.

(b) Notwithstanding s. 111.015, this section does not require the Governor to establish a new domicile at the head of government.

Section 4. Subsection (1) of section 16.01, Florida Statutes, is amended to read:

16.01 Residence, office, and duties of Attorney General.—The Attorney General:

(1) Shall reside at the seat of government and shall keep his or her office in the capitol. Notwithstanding s. 111.015, this subsection does not require the Attorney General to establish a new domicile at the seat of government.

Section 5. Section 17.02, Florida Statutes, is amended to read:

17.02 Place of residence and office.—The Chief Financial Officer shall reside at the seat of government of this state and shall keep his or her ~~hold~~ office in a room in the Capitol. Notwithstanding s. 111.015, this section does not require the Chief Financial Officer to establish a new domicile at the seat of government.

Section 6. Section 19.23, Florida Statutes, is amended to read:

19.23 Residence and office.—The Commissioner of Agriculture shall reside at the seat of government in this state, and shall keep his or her office in a room in the capitol. Notwithstanding

442740

s. 111.015, this section does not require the Commissioner of Agriculture to establish a new domicile at the seat of government.

Section 7. Section 114.03, Florida Statutes, is amended to read:

114.03 Certain executive officers not to absent themselves from the state.—

(1) The Attorney General, Chief Financial Officer, and Commissioner of Agriculture shall reside at the capital, and no member of the Cabinet shall absent himself or herself from the state for a period of 60 consecutive days or more without the consent of the Governor and a majority of the Cabinet. If a Cabinet officer should refuse or fail to comply with and observe the requirements of this section, his or her office may be deemed vacant pursuant to paragraph (f) or paragraph (g) of s. 114.01(1), as appropriate.

(2) Notwithstanding s. 111.015, this section does not require the Attorney General, the Chief Financial Officer, or the Commissioner of Agriculture to establish a new domicile at the capital.

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

exceptions for active duty military members; amending ss. 14.01, 16.01, 17.02, 19.23, and 114.03, F.S.; specifying the applicability of residency requirements on the Governor and Cabinet officers; specifying that

442740

the act does not apply to members of the Legislature; providing an effective date.

By the Committees on Judiciary; and Ethics and Elections; and Senator Latvala

590-03169-14 2014602c2

A bill to be entitled

An act relating to the residency of candidates and public officers; creating ss. 99.0125 and 111.015, F.S.; requiring a candidate or public officer required to reside in a specific geographic area to have only one domicile at a time; providing factors that may be considered when determining residency; providing exceptions for active duty military members; providing for applicability; providing an effective date.

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

Section 1. Section 99.0125, Florida Statutes, is created to read:

99.0125 Residency; candidates.—

(1) The address at which a candidate maintains his or her domicile must be used to satisfy any candidate residency requirement. A candidate may have only one domicile at a time. The building claimed as a domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes.

(2) Factors that may be considered in determining whether a candidate meets a residency requirement include, but are not limited to:

(a) A formal declaration of domicile in the public records of the county.

(b) A statement, whether oral or written, indicating the intention to establish a place as his or her domicile.

590-03169-14 2014602c2

(c) Whether he or she transferred the title to his or her previous residence.

(d) The address at which he or she claims a homestead exemption.

(e) An address at which he or she has purchased, rented, or leased property.

(f) The address where he or she plans to build a new home.

(g) The amount of time that he or she spends at property he or she owns, leases, or rents.

(h) Proof of payment for, and usage activity of, utilities at property owned by the candidate.

(i) The address at which he or she receives mail and correspondence.

(j) The address provided to register his or her dependent children for school.

(k) The address of his or her spouse or immediate family members.

(l) The physical address of his or her employment.

(m) Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated.

(n) The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration.

(o) The address on his or her valid Florida driver license issued under s. 322.18, valid Florida identification card issued under s. 322.051, or any other license required by law.

(p) The address on the title to, or a certificate of registration of, his or her motor vehicle.

(q) The address listed on filed federal income tax returns.

(r) The location where his or her bank statements and checking accounts are registered.

(s) A request made to a federal, state, or local government agency to update or change his or her address.

(t) Whether he or she has relinquished a license or permit held in another jurisdiction.

(3) An active duty military member may not be deemed to have acquired a domicile in this state solely by reason of being stationed on duty in this state; nor shall an active duty military member be deemed to have abandoned domicile in this state solely because he or she is stationed in another municipality, state, or country. However, this subsection does not prohibit an active duty military member from establishing a new domicile where he or she is stationed.

Section 2. Section 111.015, Florida Statutes, is created to read:

111.015 Residency; public officers.—

(1) The address at which a public officer maintains his or her domicile must be used to satisfy any residency requirement. A public officer may have only one domicile at a time. The building claimed as a domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes.

(2) Factors that may be considered in determining whether a public officer meets a residency requirement include, but are not limited to:

(a) A formal declaration of domicile in the public records

of the county.

(b) A statement, whether oral or written, indicating the intention to establish a place as his or her domicile.

(c) Whether he or she transferred the title to his or her previous residence.

(d) The address at which he or she claims a homestead exemption.

(e) An address at which he or she has purchased, rented, or leased property.

(f) The address where he or she plans to build a new home.

(g) The amount of time that he or she spends at property he or she owns, leases, or rents.

(h) Proof of payment for, and usage activity of, utilities at property owned by the public officer.

(i) The address at which he or she receives mail and correspondence.

(j) The address provided to register his or her dependent children for school.

(k) The address of his or her spouse or immediate family members.

(l) The physical address of his or her employment.

(m) Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated.

(n) The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration.

(o) The address on his or her valid Florida driver license issued under s. 322.18, valid Florida identification card issued

under s. 322.051, or any other license required by law.

(p) The address on the title to, or a certificate of registration of, his or her motor vehicle.

(q) The address listed on filed federal income tax returns.

(r) The location where his or her bank statements and checking accounts are registered.

(s) A request made to a federal, state, or local government agency to update or change his or her address.

(t) Whether he or she has relinquished a license or permit held in another jurisdiction.

(3) An active duty military member may not be deemed to have acquired a domicile in this state solely by reason of being stationed on duty in this state; nor shall an active duty military member be deemed to have abandoned domicile in this state solely because he or she is stationed in another municipality, state, or country. However, this subsection does not prohibit an active duty military member from establishing a new domicile where he or she is stationed.

Section 3. In accordance with s. 2, Art. III of the State Constitution, this act does not apply to members of the Legislature.

Section 4. This act shall take effect January 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic _____ Bill Number 602 *(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

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 1226
INTRODUCER:	Rules Committee; Education Committee and Senator Montford
SUBJECT:	Education
DATE:	April 10, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	deMarsh-Mathues	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1226 repeals discontinued or unfunded programs, corrects cross references, removes antiquated effective dates, eliminates duplicate reporting requirements, repeals concluded pilot programs, and updates terminology.

The bill clarifies the graduation requirements for certain high school students. In the 2013 session the Legislature passed SB 1076 which, in part, dealt with course and testing requirements for high school graduation. The bill explains how the new graduation requirements impact students who were in high school before SB 1076 passed.

The bill removes references to repealed s. 1003.428, F.S., (old high school graduation requirements) and s. 1003.429, F.S., (old 18-credit early graduation options) and adds references to s. 1003.4282, F.S., (new standard high school diploma requirements), s. 1003.4281, F.S., (early high school graduation), and s. 1002.3105(5), F.S., (new 18-credit high school graduation option).

The bill has an effective date upon becoming law.

II. Present Situation:

CS/CS/SB 1226 is a coordinated effort by the Governor, the Legislature, district school superintendents, and other education stakeholders to reduce regulation of public educational institutions. In October 2012, the Governor selected seven district school superintendents to

formulate recommendations for eliminating unnecessary or outdated statutes and State Board of Education rules. The DOE distributed a statewide survey soliciting recommendations from the remaining 60 superintendents. The statutes proposed for repeal by this bill are the product of these continuing efforts.

III. Effect of Proposed Changes:

Auditor General Reporting Requirements

Section 11.45, F.S., requires the Auditor General (AG) to annually conduct a financial audit of all state universities and state colleges.[1] The AG is also required to annually conduct a financial audit of the accounts and records of all district school boards in counties with a population of fewer than 150,000.[2]

District school boards in counties with a population of more than 150,000 receive financial audits once every 3 years.[3] The AG conducts operational audits of the accounts and records of state universities, state colleges, and district school boards at least every three years.[4]

Upon conclusion of an audit, the AG discusses the audit with the official whose office is subject to audit and if there are any findings provides a list of the AG's findings, which may be included in the audit report.[5]

However, the AG is only required to notify the Joint Legislative Auditing Committee (JLAC) of any audit review which indicates that a state university or state college has failed to take corrective action in response to a recommendation which was included in two preceding financial or operational audit reports.[6] There is no requirement that the AG notify JLAC that a school district has failed to take corrective action in response to recommendations.

The bill amends s. 11.45, F.S., requiring the AG to notify the JLAC of any audit review which indicates that a school district has failed to take corrective action in response to a recommendation included in two preceding financial or operational audit reports.

Administrative Procedures Act - Agency Review, Revision, and Report

Chapter 120, F.S., the Administrative Procedures Act (APA), establishes the process for administrative rulemaking. Rulemaking authority is delegated by the Legislature[7] through statute and authorizes or requires an agency to "adopt, develop, establish, or otherwise create" a rule.[8]

Section 120.74(1), F.S., requires agencies to review their rules and perform the following:

[1] Section 11.45(2)(c), F.S.
[2] Section 11.45(2)(d), F.S.
[3] Section 11.45(2)(e), F.S.
[4] Section 11.45(2)(f), F.S.
[5] Section 11.45(4)(d), F.S.
[6] Section 11.45(7)(j), F.S.
[7] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla.1st DCA 2000).
[8] Section 120.52(17), F.S.

- Identify and correct deficiencies;
- Clarify and simplify rules;
- Delete obsolete or unnecessary rules;
- Delete rules that are redundant of statutes;
- Improve efficiency, reduce paperwork, or decrease cost to government and the private sector;
- Confer with agencies having concurrent jurisdiction and determine whether their rules can be coordinated; and
- Determine whether rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rules.

By October 1 of each odd-numbered year, each agency must file a report with the President of the Senate, the Speaker of the House of Representatives, and the Joint Administrative Procedures Committee (JAPC), and each substantive committee of the Legislature, certifying, among other things, that the agency reviewed its rules in accordance with s. 120.74(1) F.S., and detailing changes made to the agency's rules as a result of the review.[9]

By July 1 of each year each agency must file with the President of the Senate, the Speaker of the House of Representatives, and the Administrative Procedures Committee a regulatory plan identifying and describing each rule the agency proposed to adopt for the 12 month period beginning on the July 1 reporting date and ending on the subsequent June 30,[10] excluding emergency rules.[11]

The bill amends s. 120.74, F.S., to exclude school districts, Florida College System (FCS) institutions, the Florida School for the Deaf and the Blind, and State University System (SUS) institutions from the rule review and reporting requirements. These entities otherwise adopt and review rules pursuant to specific requirements of law and are subject to legislative oversight by the various education committees.

Truancy Petition; Prosecution; Disposition

Section 984.151(1), F.S., authorizes the district school superintendent to file a truancy petition if the school determines that a student subject to compulsory school attendance has had at least 5 unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90 calendar day period or has had more than 15 unexcused absences in a 90 calendar day period.

The bill amends s. 984.151(1), F.S., allowing the district school superintendent's designee to file a truancy petition.

[9] Section 120.74(2), F.S.
[10] Section 120.74(3), F.S.
[11] Section 120.54(4)(a), F.S.

Education Governance Transfers

Section 1000.01(5), F.S.,[12] abolished the Board of Regents, the State Board of Community Colleges, and the Postsecondary Education Planning Committee effective July 1, 2001. The powers, duties, functions, records, personnel, property, unexpected balances of appropriation allocations, other funds, administrative authority; administrative rules; pending issues, and existing contracts of the Board of Regents, the State Board of Community Colleges, the Articulation Coordinating Committee, and the Education Standards Commission were transferred to the State Board of Education (state board).

The bill repeals s. 1000.01(5), F.S., relating to the education governance transfers because the transfers have already occurred. The language is obsolete.

Regional Education Compact and Interstate Compact on Educational Opportunity for Military Children

Sections 1000.33 and 1000.37, F.S., requires the Secretary of State to furnish an enrolled copy of Florida's law enacting the Regional Education Compact and the Interstate Compact on Educational Opportunity for Military Children to all states, respectively, that are members of the compact.

Regional Education Compact

The Regional Education Compact promotes the development and maintenance of regional education services and facilities in the Southern States in the professional, technological, scientific, literary, and other fields so as to provide greater educational advantages.[13] The Southern Regional Education Board's website provides information on which states are participating in the Regional Education Compact.[14]

The Interstate Compact on Educational Opportunity for Military Children

The Interstate Compact on Educational Opportunity for Military Children enables member states to uniformly address educational transition issues faced by military families. The compact governs member states in several areas, including school placement, enrollment, records transfer, and graduation for children of active-duty military families.[15] Member states are required to establish an "Interstate Commission on Educational Opportunity" to oversee the governance of the compact. The commission's website provides information on which states are participating in the compact.[16]

---

[12] Formerly s. 229.003, F.S., (Florida education governance reorganization) as amended by Chapter 2001-170, s. 3, Laws of Fla.
[13] Section 1000.32, F.S.
[14] Southern Regional Education Board (SREB), *About SREB*, http://www.sreb.org/page/1068/about_SREB.html (last visited Mar. 10, 2014).
[15] Section 1000.36, F.S.
[16] Military Interstate Children's Compact Commission (MIC3), *MIC3 In The United States, available at* http://mic3.net/pages/contact/contactmic3_map.aspx (last visited Mar. 10, 2014).

The bill repeals ss. 1000.33 and 1000.37, F.S., requiring the Secretary of State to furnish an enrolled copy of Florida's law enacting the Regional Education Compact and the Interstate Compact on Educational Opportunity for Military Children to all states, respectively, that are members of the compact. The information relating to the compacts and states that are members of the compacts can be located online.

Commissioner of Education

Section 1001.10(6)(h), F.S., provides the Commissioner of Education the power and duty to develop and implement a plan for cooperating with the federal government in carrying out any or all phases of the educational program and to recommend policies for administering funds that are appropriated by Congress and apportioned to the state for any or all educational purpose.

In 2006, this section of law was amended to require the commissioner to submit to the Legislature a proposed state plan for the reauthorization of the No Child Left Behind (NCLB) Act before the plan is submitted to federal agencies. The President of the Senate and the Speaker of the House of Representatives were to appoint members of the appropriate education and appropriations committees to serve as a select committee to review the proposed state plan.[17]

Florida has never sent a state plan to the United States Department of Education for the reauthorization of the NCLB Act. The bill repeals s. 1001.10(6)(h), F.S., due to the fact that states do not have authority to reauthorize or plan reauthorization of a federal law, only the United State Congress has that authority.

Section 1001.10(6)(k), F.S., requires the commissioner to maintain a Citizen Information Center responsible for the preparation, publication, and dissemination of user-friendly materials relating to K-12 scholarship programs and Voluntary Prekindergarten (VPK) Education programs. According to the Department of Education (DOE) there is no Citizen Information Center.[18]

The bill amends s. 1001.10(6), F.S., to remove the requirement for the commissioner to submit a reauthorization plan of the NCLB Act and removes the reference to the Citizen Information Center. However, the commissioner is still responsible for dissemination of materials relating to K-12 scholarship programs and VPK Education programs, which is done through various divisions within DOE.

Educational Television

Section 1001.25, F.S., authorizes DOE to establish a television network. DOE is required, through educational television or other electronic media, to extend educational services to all the state system of public education, except SUS institutions. DOE established a television network known as the Knowledge Network. The Knowledge Network was discontinued as of July 1, 2011. DOE only has on its website under public broadcasting links to public broadcasting system sites, the Florida Channel, and Florida Public Radio Stations. The bill repeals s. 1001.25, F.S.

[17] Chapter 2006-74, s. 7, Laws of Fla.
[18] Telephone conversation with staff, Florida Department of Education, Office of Governmental Relations (February 12. 2014).

Section 1001.26, F.S., provides that the public broadcasting system for Florida is administered by DOE pursuant to rules adopted by the state board. The DOE has not adopted rules. However, the law is self-executing and no rules are necessary.

The bill amends s. 1001.26, F.S., to:

- Remove the requirement that the state board adopt rules for the administration of the program.
- Revise DOE's administrative duties to simply distribute funds as appropriated by the Legislature.
- Remove the requirement that the public broadcasting system must complement and share resources with the instructional programming services of DOE and educational Ultra High Frequency (UHF), Very High Frequency (VHF), Educational Broadband Services (EBS), and Frequency Modulation (FM) stations in the state. DOE no longer provides instructional programming.
- Remove the requirement that the public broadcasting system must include support for new stations meeting Corporation for Public Broadcasting qualifications and providing a first service to an audience that does not currently receive a broadcast signal or provide a significant new program service as defined by state board rule.[19]

The bill imports from repealed s. 1001.25, F.S., that the facilities, plant, or personnel of any educational television station that is supported in whole or in part by state funds may not be used directly or indirectly for the promotion, advertisement, or advancement of any political candidate for any municipal, county, legislative, congressional, or state office; that fair, open and free discussion between political candidates for municipal, county, legislative, congressional, or state office may be permitted in order to help materially reduce the excessive cost of campaigns and to ensure that the state's citizens are fully informed about issues and candidates in campaigns; and that violation of any prohibition contained in this section is a misdemeanor of the second degree.

District School Board Membership

Section 1001.34, F.S., specifies that each district school board must be composed of not less than five members. Each district school board member must be a qualified elector of the district in which he or she serves and must be a resident of the member's residence area from which the member is elected. Residency must be maintained throughout the term of office.

The bill provides for the adoption of a resolution by a district school board to increase its membership and specify the number of members to be elected by residence areas or at large. The bill requires that the resolution specify a procedure for altering the membership of the board, including any necessary changes to stagger the terms of additional members.

If adopted, the resolution is subject to the approval of the electors in a referendum to be held at the next primary or general election. The bill provides that, if the referendum is approved, an

[19] FCC Rules Governing Public TV and Radio, *Non-Profit Media*, *available at* http://transition.fcc.gov/osp/inc-report/INoC-31-Nonprofit-Media.pdf (last visited Mar. 10, 2014).

election of additional school board members may occur at any primary, general, or otherwise-called special election.

District School Superintendent Salary

Section 1001.47(7), F.S., provides that for fiscal year 2009 - 2010 the salary of each elected district school superintendent be reduced by two percent.

The bill repeals s. 1001.47(7), F.S., removing the authorization to reduce each elected district school superintendent's 2009 - 2010 salary by two percent. The reduction in the salaries of elected district school superintendents only applied to fiscal year 2009 - 2010.

Section 1001.50(6), F.S., encourages district school boards and superintendents to review the superintendent's annual remuneration for the 2009 - 2010 fiscal year and mutually agree to a reduction of at least five percent.

The bill repeals s. 1001.50(6), F.S., removing the option for district school boards and superintendents to review the superintendent's annual remuneration for the 2009 - 2010 fiscal year and mutually agree to a reduction of at least five percent. The reduction in the salaries of superintendent's annual remuneration only applied to fiscal year 2009 - 2010.

Transfer of Benefits

Section 1001.62, F.S., requires: "All local or special acts in force on July 1, 1968, that provide benefits for a Florida College System institution through a district school board shall continue in full force and effect, and such benefits shall be transmitted to the FCS institution board of trustees." The transfer of benefits arising under local or special acts occurred in 1968.

The bill repeals s. 1001.62, F.S., removing outdated language relating to the transfer of benefits arising under local or specials acts.

Controlled Open Enrollment Plan

Section 1002.31, F.S., authorizes, but does not require, each school district to offer controlled open enrollment,[20] yet requires each school district to develop a controlled open enrolment plan and submit the plan to the commissioner. Districts must develop a system of priorities for the controlled open enrollment plan that includes consideration of the following:

- An application process required to participate in the controlled open enrollment program.
- A process that allows parents to declare school preferences.
- A process that encourages placements of siblings within the same school.
- A lottery procedure used by the school district to determine student assignment.
- An appeal process for hardship cases.
- Procedures to maintain socioeconomic, demographic, and racial balance.

[20] Florida Department of Education, Office of Independent Education & Parental Choice, *Controlled Open Enrollment*, *available at* http://www.floridaschoolchoice.org/Information/ControlledOpenEnrollment, (last visited Mar. 10, 2014).

- Availability of transportation.
- A process that promotes strong parental involvement, including the designation of a parent liaison.
- A strategy that establishes a clearing house of information designed to assist parents in making informed choices.[21]

The bill amends s. 1002.31, F.S., requiring only the school districts offering controlled open enrollment to submit a controlled open enrollment plan to the commissioner.

Charter Schools and Charter Technical Career Centers

Section 1002.33(6)(a), F.S., requires as part of the charter school application process that applicants provide documentation of participation in training provided by the DOE, contrary to other law that requires training only after an applicant has been approved.[22] This required training would have to be done before the applicant was approved to open a charter school.

Section 1002.34(6)(d), F.S., requires DOE to offer or arrange for training and technical assistance to charter technical career center applicants in developing business plans and estimating costs and income. The assistance must address estimating startup cost, projecting enrollment, and identifying the types and amounts of state and federal financial assistance the cent may be eligible to receive. The training must include instruction in accurate financial planning and good business practices. Charter technical career center applicants are required to participate in training provided by DOE before filing an application.

The bill amends ss. 1002.33(6)(a), and 1002.34(6)(d), F.S., removing the requirement that DOE train applicants before they have been approved in order to conform with changes made to the law in 2011[23] that simply requires DOE to offer or arrange for training and technical assistance to approved applicants. Approved applicants must participate in training at least 30 days before the first day of classes.[24]

Charter Schools and Charter Technical Career Centers / Financial Conditions and Financial Emergencies

Section 1002.345, F.S., provides that a charter school or a charter technical career center is subject to an expedited review by the sponsor if one of the following occurs:

- Failure to provide for an audit.
- Failure to comply with reporting requirements.
- Receipt of an annual audit or monthly financial statement identifying a deteriorating financial condition, or notification of a financial emergency.

[21] Section 1003.31.(5), F.S.
[22] *See* s. 1003.33(6)(f), F.S.
[23] Chapter 2011-232, s. 3, Laws of Fla.
[24] Section 1002.33(6)(f), F.S.

A sponsor must notify the charter school's or center's governing board within 7 business days after one of these conditions occurs. The commissioner must annually report to the state board each charter school and charter technical career center that is subject to a financial recovery plan or corrective action plan.

The bill amends s. 1002.345, F.S., reiterating that high-performing charter schools are only required to submit quarterly financial statements to their sponsors. The bill requires the sponsor to notify the commissioner of the need for an expedited review. This will provide the commissioner with a timeframe for when to expect the corrective action plan from the governing board and sponsor.

The bill also removes the requirement that the commissioner must annually report to the state board each charter school and charter technical career center that is subject to a financial recovery plan or a corrective action plan. Whether a charter school or charter technical career center is subject to a financial recovery plan or corrective action plan is between the charter school or center and its sponsor, the school district – this has nothing to do with the state board. Requiring the commissioner to report such information to the state board is without consequence in that the state board is not authorized by law to do anything about the situation – it is a local issue, up until such time a school district revokes or refuses to renew a charter or center and the charter or center chooses to appeal to the state board.

John M. McKay Scholarship

The John M. McKay Scholarships for Students with Disabilities Program provides scholarships for eligible students with disabilities to attend an eligible public or private school of their choice. To be eligible to receive a McKay Scholarship, the student must:

- Have received specialized instructional services under the Voluntary Prekindergarten Education Program during the previous school year and have a current individual educational plan (IEP) or a 504 accommodation plan has been issued under s. 504 of the Rehabilitation Act of 1973;
- Have spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind; or
- Have been enrolled and reported by a school district for funding, during the October and February Florida Education Finance Program (FEFP) surveys, in any of the 5 years prior to 2010 - 2011 fiscal year; have a current IEP no later than June 30, 2011; and receive a first-time McKay Scholarship for the 2011-2012 school year.

Section 1002.39(2)(a)3., F.S., expanded the eligibility window for students to qualify for a McKay Scholarship for one year only. Students who spent any of the 5 years in public school prior to the 2010 - 2011 fiscal year could apply by June 30, 2011. This application period has expired. Students who qualified under this provision and received a McKay Scholarship will continue to receive the scholarship until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first.

The bill amends s. 1002.39(2)(a)3., F.S., removing the outdated language expanding the eligibility window for students to qualify for a McKay Scholarship. The time parameter has expired.

K-8 Virtual School Programs

In 2003, the Legislature authorized DOE to create a minimum of two pilot K-8 virtual schools. The schools were established as independent, statewide public schools that use online and distance learning technology to deliver instruction to full-time students in kindergarten through grade eight.[25]

In 2006, the Legislature removed the program's pilot status and statutorily codified the K-8 Virtual School Program as a statewide educational choice program within DOE.[26] The K-8 Virtual School Program is subject to annual legislative appropriation. The K-8 Virtual School Program reported 0 FTE in the 2012 - 2013 FEFP third calculation and .17 FTE for the 2012-2013 fifth calculation.

The bill repeals s. 1002.415, F.S., eliminating the K-8 Virtual School Program under this section because no students are enrolled. However, this does not eliminate the program because the program was transferred to Palm Beach and Palm Beach receives FEFP funding for this program.

Professional Credentials of Prekindergarten Instructors

Section 1002.65, F.S., enacted in 2004,[27] established aspirational goals for the 2010 - 2011 academic year that included the following:

- Each prekindergarten class will have at least one prekindergarten instructor who holds an associate's or higher degree in the field of early childhood education or child development; and
- Each prekindergarten class composed of 11 or more students, in addition to the prekindergarten instructor who meets the degree requirements, the class will have at least one prekindergarten instructor who meets each of the following requirements:
  - The prekindergarten instructor must hold, at a minimum, one of the following credentials:
  - A child development associates credential issued by the National Credentialing Program of the Council for Professional Recognition (NCPCPR); or
  - A credential approved by the Department of Children and Families as being equivalent to or greater than the credential issued by the NCPCPR.
  - The prekindergarten instructor must successfully complete an emergent literacy training course and a student performance standards training course.[28]

Aspirational goals were also set for the 2013 - 2014 academic year, that each prekindergarten class will have at least one kindergarten instructor who holds a bachelor's or higher degree in the field of early childhood education or child-development.[29]

[25] Specific Appropriation 4D, Chapter 2003-397, s. 1, Laws of Fla.
[26] Chapter 2006-48, s. 1, Laws of Fla., codified at s. 1002.415, F.S.
[27] Chapter 2004-484, s. 1, Laws of Fla.
[28] Section 1002.55(3)(c), F.S.
[29] Section 1002.65(2)(b), F.S.

The bill repeals s. 1002.65, F.S., because the time parameter for meeting the aspirational goals for VPK instructors has expired.

Financial Literary Cost Analysis

Section 1003.41(3), F.S., requires the commissioner to prepare an analysis of the costs associated with implementing a separate, one-half credit course in financial literacy, including estimated costs for instructional personnel, training, and the development or purchase of instructional materials. The commissioner is required to work with one or more nonprofit organizations with proven expertise in the area of personal finance, consider free resources that can be utilized for instructional materials, and provide data on the implementation of such a course in other states. The commissioner must provide the cost analysis to the President of the Senate and the Speaker of the House of Representatives by October 1, 2013.

On October 1, 2013, the commissioner provided the President of the Senate and the Speaker of the House of Representatives an analysis of the costs associated with implementing a separate, one-half credit course in financial literacy.[30]

The bill amends s. 1003.41(3), F.S., removing obsolete language requiring the commissioner to provide a cost analysis.

School Assessment and Promotion

Middle Grades Promotion

Section 1003.4156(1)(b), F.S., provides that in order to be promoted from middle school to high school a student must successfully complete 3 middle grades or higher courses in mathematics. A middle grades school must offer at least 1 high school level mathematics course for which a student may earn high school credit. Successful completion of high school level Algebra I or Geometry courses is not contingent upon the student's performance on the statewide, standardized end-of-course (EOC) assessment or, the Algebra I or Geometry assessment. Beginning with the 2011 - 2012 school year, to earn high school credit for Algebra I, a middle grades student was to have passed the Algebra I EOC assessment. Beginning in the 2012 - 2013 school year, to earn high school credit for Geometry a middle grades student must take the statewide, standardized Geometry EOC assessment, which constitutes 30 percent of the student's final course grade and earn a passing grade in the course.

The bill amends s. 1003.4156, F.S., eliminating the must pass Algebra I EOC requirement for a middle grades student to earn high school credit, but beginning with the 2013 - 2014 school year and thereafter, like Geometry, student performance on the Algebra I EOC assessment constitutes 30 percent of the student's final course grade.

Section 1003.4156(1)(c), F.S., provides that to be promoted from middle grades to high school a student must successfully complete 3 middle grades or higher courses in social studies.

[30] Florida Department of Education, Office of the Commissioner of Education, Implementation of Financial Literacy Course (Oct. 2013) (on file with the Senate Committee on Education).

Beginning with students entering grade 6 in the 2012 -2013 school year, one of these courses must be at least a one semester civics education course.

The bill establishes a transfer policy for a middle grades student who transfers into the state's public school system from out of the country, out of state, a private school, or a home education program. The policy provides that if a student transfers in after the beginning of the second term of the eighth grade the student is not required to meet the civics education requirement for promotion from middle grades, if the student's transcript documents passage of 3 courses in social studies or 2 year-long courses in social studies that included coverage of civics education.

Section 1008.22(3)(b)1., F.S., states that middle grades students enrolled in Algebra I or Geometry must take the statewide, standardized EOC assessment for those courses and are "not required" to take the corresponding grade-level Florida Comprehensive Assessment Test (FCAT). Because the law does not prohibit double testing some districts have so required.

The bill amends s. 1008.22(3)(b)1., F.S., providing that middle grade students enrolled in Algebra I, Geometry, or Biology I must take the statewide, standardized EOC assessment for those courses and "shall not take" the corresponding subject and grade-level statewide, standardized assessment.

High School Graduation Requirements

In 2013, the Legislature passed CS/CS/SB 1076. The bill, in part, created a new section of law, s. 1003. 4282, F.S., establishing high school graduation requirements for students entering grade 9 in the 2013 - 2014 school year and thereafter.

Currently Florida public high school students have four options for obtaining a standard high school diploma -- a traditional 4-year, 24-credit option;[31] an 18-credit graduation option;[32] or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) program CS/CS/SB 1076 created s. 1002.3105(5), F.S., which established the new 18-credit graduation option and repealed the old 18-credit college preparatory and career preparatory graduation options contained in s. 1003.429, F.S.

In addition, current law provides, in s. 1003.4281, F.S., that each school district must adopt an early graduation policy allowing a high school student who completes 24 credits in less than eight semesters and meets the GPA and assessment requirements to graduate early.

The bill removes references to repealed s. 1003.428, F.S., (Old high school graduation requirements) and s. 1003.429, F.S., (Old 18-credit early graduation options) and adds references to s. 1003.4282, F.S., (New standard high school diploma requirements), s. 1003.4281, F.S., (Early high school graduation), and s. 1002.3105(5), F.S. (New 18-credit high school graduation option).

[31] Section 1003.428, F.S.
[32] Section 1002.3105(5), F.S.

Online Course Requirement

Section 1003.4282(4), F.S., requires at least one course within the 24 credits required for a standard high school diploma to be completed through online learning. However, an online driver education course is excluded from meeting the online course requirement.

The bill amends s. 1003.4282(4), F.S., providing that current law prohibiting use of a driver education course to meet the online course requirement only applies to students entering grade 9 in the 2013 - 2014 school year and thereafter. The law prohibiting an online driver education course from meeting the online course requirement for high school graduation was passed last session (SB 1076), along with the new high school graduation requirements. Only incoming students in grade 9 in 2013 – 2014 and thereafter are impacted by this change. Beginning with grade 9 students in the 2011 – 2012 school year, students were required to take an online course. If these students already met their online requirement with a driver education course, they should not be negatively impacted by last year's change in law.

Certificate of Completion

Section 1003.4282(7), F.S., provides that "a certificate of completion may be awarded to a student who fails to earn the required credits or achieve a 2.0 GPA must be awarded a certificate of completion by the state board."

The bill amends s. 1003.4282, F.S., to correctly provide that a student who earns the required 24 credits or 18 credits but fails to pass the required assessments or earn a 2.0 GPA must be awarded a certificate of completion. The bill also clarifies that a student awarded a certificate of completion may remain in high school for one additional year, either full-time or part-time, in order to receive special instruction designed to remedy his or her identified deficiencies.

Cohort Transition to New Graduation Requirements

CS/CS/SB 1076 did not repeal s. 1003.428, F.S., the old law dealing with high school graduation requirements for students entering grade 9 in the 2007 - 2008 school year and thereafter. Certain provisions in s. 1003.4282, F.S., the new graduation requirements, beginning with students entering grade 9 in the 2013 - 2014 school year, created by CS/CS/SB 1076, did reference, in part, students in earlier grade 9 cohorts. As a result, confusion arose as to what provisions of law applied to students entering grade 9 prior to the 2013 - 2014 school year.

The bill identifies, with specificity, all course and assessment requirements for students entering grade 9 before the 2010 - 2011 school year,[33] entering grade 9 in the 2010 - 2011 school year,[34]

[33] The requirements are: Four credits in English/ELA; Four credits in mathematics, which must include Algebra I; Three credits in science, two of which must have a laboratory component; Three credits in social studies of which one credit in World History, one credit in U.S. History, one-half credit in U.S. Government, and one-half credit in economies is required; One credit in fine or performing arts, speech and debate, or practical arts; One credit in physical education; and Eight credits in electives.

[34] The requirements are: Four credits in English/ELA; Four credits in mathematics, which must include Algebra I and Geometry school year; Three credits in science, two of which must have a laboratory component; Three credits in social studies of which one credit in World History, one credit in U.S. History, one-half credit in U.S. Government, and one-half credit in economies is required; One credit in fine or performing arts, speech and debate, or practical arts; One credit in physical education; and Eight credits in electives.

entering grade 9 in the 2011 - 2012 school year,[35] and entering grade 9 in the 2012 - 2013 school year.[36]

The bill adds an automatic repeal date of July 1, 2020, to the new subsection of law that identifies, by grade 9 cohorts, all course and assessment requirements for graduating from high school with a standard diploma. The grade 9 students in the identified cohorts will have graduated from high school by 2017. The bill also provides that policy adopted in rule by a district school board may require for any cohort of students that performance on a statewide, standardized EOC assessment constitutes 30 percent of a student's final course grade.

Industry Certification

There are two ways in which students may use career education or industry certification courses to satisfy core academic credits required for a standard high school diploma. First, the DOE is required to develop, for approval by the state board, multiple, career education courses, or a series of courses that allow students to simultaneously earn career education course and academic course credit in courses required for graduation.[37] Second, students entering grade 9 in the 2013 - 2014 school year and thereafter may substitute industry certification courses that lead to college credit for up to 2 mathematics credits and up to 1 science credit.[38]

The bill amends s. 1003.4282, F.S., to add that the industry certification that can be substituted for credit must have a statewide college credit articulation agreement approved by the state board. The bill provides that students who earn an industry certification for which there is a statewide college credit articulation agreement approved by the state board may not substitute certification for Algebra I, Geometry, or Biology I.

The bill also requires that if a transfer student's transcript shows a final course grade and course credit in Algebra I, Geometry, Biology I, or U. S. History, the transferring course final grade and credit must be honored without the student taking the requisite statewide, standardized EOC assessment and without the assessment results constituting 30 percent of the student's final course grade.

Student Assessments

Section 1008.22, F.S., requires the commissioner to design and implement a statewide, standardized assessment program aligned to the core curricular content established in the Next

[35] The requirements are: Four credits in English/ELA; Four credits in mathematics, which must include Algebra I and Geometry; Three credits in science, two of which must have a laboratory component; Three credits in social studies of which one credit in World History, one credit in U. S. History, one-half credit in U.S. Government, and one-half credit in economies is required; One credit in fine or performing arts, speech and debate, or practical arts; One credit in physical education; Eight credits in electives; and One online course.

[36] The requirements are four credits in English/ELA; Four credits in mathematics, which must include Algebra I and Geometry; Three credits in science, two of which must have a laboratory component; Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economies is required; One credit in fine or performing arts, speech and debate, or practical arts; One credit in physical education; Eight credits in electives; One online course.

[37] Section 1003.4282(9)(a), F.S.

[38] Section 1003.4282(3)(b) and (c), F.S. (Effective for students entering 9th grade in the 2013 - 2014 school year and thereafter).

Generation Sunshine State Standards. The statewide, standardized assessment program must be designed and implemented to include the FCAT until replaced by new state assessments in English Language Arts (ELA) and mathematics.

The state board must adopt rules to establish an implementation schedule to transition from FCAT Reading, FCAT Writing, FCAT Mathematics and Algebra I and Geometry EOC assessments to new state assessments in ELA and mathematics.[39] The state board must also designate by rule a passing score for each statewide, standardized EOC and FCAT assessment. In addition the state board must designate a score for each statewide, standardized EOC assessment that indicates that a student is high achieving and has the potential to meet college readiness standards by the time the student graduates from high school.[40]

The FCAT includes annual comprehensive assessments of reading in grades 3 through 10; comprehensive assessments of mathematics in grades 3 through 8; comprehensive assessments of writing at least once at the elementary, middle, and high school levels; and comprehensive assessments of science in the elementary and middle grades levels.[41] In 2010, the Legislature required the phased-in replacement of grades 9 and 10 FCAT Mathematics with the EOC assessments in Algebra I and Geometry and grade 11 FCAT Science with an EOC assessment in Biology I.[42]

Section 1008.22(3)(c)2., F.S., states that a student with a disability for whom the IEP team determines that the statewide, standardized assessment cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, must have assessment results waived for the purpose of receiving a course grade or a standard high school diploma. Such waiver must be designated on the student's transcript.

SB 1226:

- Removes the requirement that the state board designate an additional cut score on EOC assessments that identifies a student as high achieving because how high achieving a student is can be determined by the score the student receives on the assessment, i.e., Levels 1 - 5. Clarifies that a student's performance on the Algebra II and Biology I EOC assessment constitutes 30 percent of a student's final course grade, in conformance with s. 1003.4282, F.S.
- Specifies that the waiver of assessment results on a student's transcript must be limited to a statement that "performance on an assessment was waived for the purpose of receiving a course grade or a standard high school diploma, as applicable."
- Removes rulemaking requirements for the state board to establish an implementation schedule to transition from FCAT Reading, FCAT Writing, FCAT Mathematics and Algebra I and Geometry EOC assessments to new state assessments in ELA and mathematics. The commissioner is required to establish and publish on DOE's website an implementation schedule to transition from the statewide, standardized Reading and writing assessments to

[39] Section 1008.22(3)(d)3., F.S.
[40] Section 1008.22(3)(d)2., F.S.
[41] Section 1008.22(3)(a), F.S.
[42] Section 1008.22(3)(b), F.S.

the ELA assessments and to the revised Mathematics assessments including the Algebra I and Geometry EOC assessments.

Scholar Designations

Section 1003.4285, F.S., provides that students may earn a Scholar designation if they satisfy additional course testing requirements exceeding the requirements for a standard high school diploma.

Students pursuing a Scholar designation must:

- Pass the 11th grade ELA assessment, effective when the state transitions to new assessments;
- Earn one credit in Algebra II and one credit in Statistics or an equally rigorous course. When the state transitions to new assessments, students must pass the Algebra II assessment;
- Pass the Biology I EOC assessment and earn one credit in Chemistry or Physics and one credit in an equally rigorous course;
- Pass the U.S. History EOC assessment;
- Earn two credits in the same foreign language; and
- Earn at least one credit in an AP, IB, AICE, or a dual enrollment course.

The bill amends s. 1003.4285, F.S., by adding a new requirement that beginning with students entering grade 9 in the 2014 - 2015 school year, a student must pass the statewide, standardized Geometry EOC assessment in order to earn a Scholar designation.

The bill provides that a student enrolled in an AP, IB, or AICE Biology course who takes the respective AP, IB, or AICE Biology assessment and earns the minimum score necessary to earn college credit meets the Scholar designation science requirement without having to take the statewide, standardized Biology I EOC assessment. The bill also provides that a student enrolled in an AP, IB, or AICE course that includes U.S. History topics, who takes the respective AP, IB, or AICE assessment and earns the minimum score necessary to earn college credit meets the Scholar designation social studies requirement without having to take the statewide, standardized U.S. History EOC assessment.

Junior Reserve Officers' Training Corps

Section 1003.451, F.S., prohibits a school district from banning any branch of the United States Armed Forces or the U. S. Department of Homeland Security from establishing, maintaining, or operating a unit of the Junior Reserve Officers Training Corps (ROTC) at a public high school. A school district must grant military recruiters of the U.S. Armed Forces and U.S. Department of Homeland Security the same access to secondary school students, facilities, and grounds which the district grants to postsecondary educational institutions or prospective employers of students. The state board is authorized to adopt rules and take enforcement action against school districts that do not comply with these requirements.[43] However, the state board has not yet adopted rules to administer these provisions.

[43] Section 1003.451(4) and (5), F.S.

The bill repeals s. 1003.451(5), F.S., removing the authority for the state board to adopt rules to administer the section. The law is self-executing, therefore no rule is necessary.

Academically High-Performing School Districts

Section 1003.621(1)(a), F.S., requires that academically high-performing school districts must have no material weakness or instances of material noncompliance noted in their annual financial audits conducted by the AG.

The bill amends s. 1003.621(1)(a), F.S., to include a reference to s. 11.45, F.S., which requires the AG to conduct annual financial audits and operational audits of school districts every 3 years. The bill also deletes reference to the 2004 – 2005 school year, which was the year school districts could begin meeting the criteria for designation as an academically high-performing school district.

Adult High School Credit Program

Section 1004.02(4), F.S., defines "adult high school credit program" for purposes of chapter 1004 as "the award of credits upon completion of courses and passing of state mandated assessments necessary to qualify for a high school diploma. Except as provided elsewhere in law, the graduation standards for adults must be the same as those for secondary students." The term "adult high school credit program" does not appear in chapter 1004.

The bill removes the definition of "adult high school credit program" and adds the following 18 credit graduation option for adult students:

- Four credits in English Language Arts;
- Four credits in mathematics;
- Three credits in science, two of the required three credits must have laboratory component;
- The laboratory requirement may be waived by the district school board;
- Three credits in social studies;
- One credit in fine or performing arts, speech and debate, or practical arts, or one other elective credit; and
- Three credits in electives.

To be eligible for an 18-credit graduation option, the student must earn a cumulative GPA of 2.0 on a 4.0 scale.

An adult seeking a 24-credit standard high school diploma may also substitute one elective credit for required credit in fine or performing arts, speech and debate, or practical arts. In addition, the science laboratory requirement may be waived by the district school board. Finally, the one credit in physical education may be substituted with an elective credit.

State University Degree Programs

In 2010, the Legislature authorized Florida Atlantic University (FAU) to offer a Doctor of Medicine degree program, subject to the approval of the Board of Governor (BOG).[44] On April 7, 2010, BOG approved the program at FAU.

In 2010, the Legislature authorized a Doctor of Pharmacy degree program at the University of South Florida (USF) and required the program to be physically located on the campus of the University of South Florida Polytechnic (USF Polytechnic).[45] On January 29, 2009, BOG approved the program at USF. The bill repeals obsolete language authorizing a Doctor of Medicine degree program at FAU and a Doctor of Pharmacy degree program at USF. Both programs have been approved by the BOG.

Johnnie B. Byrd, S., Alzheimer's Center and Research Institute

The Legislature created the Florida Alzheimer's Center and Research Institute in 2002,[46] and subsequently renamed it the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute (Byrd Institute) in 2004.[47] In 2009, the Legislature placed the Byrd Institute at the USF.[48] The board of directors for the Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute was created to oversee the establishment of the Institute.[49]

The bill repeals s. 1004.445(2), F.S., establishing the board of directors for the Johnnie Byrd Sr., Alzheimer's Center and Research Institute. Once the Byrd Institute was placed at USF there was no longer a need for a separate governing board.

Training School Consolidation Pilot Project

In 1999, the Legislature created the Training School Consolidation Pilot Projects.[50] The project established two "pilot training centers" to provide criminal justice training in Leon and St. Johns Counties: The Pat Thomas Center at Tallahassee Community College (now called the Pat Thomas Law Enforcement Academy) and The Criminal Justice Academy at St Johns River State College (now called the Criminal Justice Program). In 1999 the programs were transferred to FCS institutions. Accordingly, the programs are no longer pilot projects.

The bill repeals s. 1004.75, F.S., relating to the Training School Consolidation Pilot Projects.

Adults with Disabilities Workforce Education Pilot Program

The Adults with Disabilities Workforce Education Pilot Program was created in 2012 to operate for two years in Hardee, DeSoto, Manatee, and Sarasota Counties and provide the option of

[44] Section 1004.3825, F.S.
[45] Chapter 2010-155, s. 6, Laws of Fla.
[46] Chapter 2002-387, s. 191, Laws of Fla.
[47] Chapter 2004-002, s. 5, Laws of Fla.
[48] Chapter 2009-060, s. 6, Laws of Fla.
[49] Section 1004.445(2), F.S.
[50] Section 1004.75, F.S. (Formerly s. 240.384, F.S.).

receiving a scholarship for instruction at private schools for up to 30 students who meet the following requirements:[51]

- Have a disability;[52]
- Are 22 years of age;
- Are receiving instruction from an instructor in a private school to meet the high school graduation requirements in s. 1003.428 or s. 1003.4282, F.S.;
- Do not have a standard high school diploma or a special high school diploma; and
- Receive supported employment services.[53]

Students in the pilot program may continue to participate in the program until they graduate from high school or turn 30, whichever occurs first. The law specifies the criteria that must be met by employment service producers and private schools. The law provides for the funding source and the calculation methodology for the amount of the scholarship.

The bill provides for the continuation of the Adults with Disabilities Workforce Education Pilot program through June 30, 2016, and permits a student to remain in the program until he or she graduates from high school or reaches the age of 40, whichever occurs first.

Statewide School Safety Hotline

In 1995, the Legislature created a statewide crime-watch program in the public schools for the purpose of reducing student actions that were in violation of the code of student conduct.[54] In 1996, the Legislature authorized DOE to contract with the Florida Sheriffs Association to establish and operate a statewide toll-free school safety hotline for the purpose of reporting incidents that affect the safety and well-being of the school's population.[55] If a toll-free school safety hotline is established by contract with the Florida Sheriffs Association, the Florida Sheriffs Association must produce a quarterly report that evaluates the incidents that have been reported on the hotline.[56]

The bill repeals s. 1006.141, F.S., relating to the Statewide School Safety Hotline.

Dating Violence and Abuse Prohibited

Section 1006.148(2), F.S., requires that each district school board adopt and implement a dating violence and abuse policy to be integrated into each school district's discipline policies.[57]

---

[51] Chapter 2012-134, Laws of Fla., s. 12, codified in s. 1004.935, F.S.

[52] Under this provision, a student with a disability includes a student who is documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.

[53] Supported employment services means employment that is located or provided in an integrated work setting with earnings paid on a commensurate wage basis and for which continued support is needed for job maintenance.

[54] Chapter 95-164, s. 2, Laws of Fla.

[55] Section 1006.141(1), F.S.

[56] Section 1006.141, F.S.

[57] Section 1006.148(1), F.S.

DOE was required to develop by January 1, 2011, a model policy to serve as a guide for district school boards in the development of the dating violence and abuse policies. On October 22, 2010, DOE provided district school boards with the model policy and training requirements.[58]

The bill repeals s. 1006.148(2), F.S., requiring DOE to develop a dating violence and abuse model policy because DOE has already developed the model policy.

Use of Instructional Materials Allocation

Section 1006.40(2), F.S., requires each district school board to purchase current instructional materials to provide each student with a major tool of instruction in core courses. Such purchases must be made within the first 3 years after the effective date of the adoption cycle. For the 2012 - 2013 mathematics adoption, a district using comprehensive mathematics instructional materials adopted in 2009 - 2010 was to be deemed in compliance with the law if the district had provided each student with such additional state-adopted materials as was necessary to align the mathematics instructional materials to the new state standards.[59]

The bill removes the 2012 - 2013 mathematics adoption language option. The bill amends s. 1006.40(2), F.S., specifying that a school board individually or as part of a consortium of school boards can purchase instructional materials if an instructional materials program has been implemented pursuant to s. 1006.283, F.S.[60]

Student with Disabilities

Section 1007.02, F.S., defines the term "student with a disability," and establishes a popular name for the section, i.e., Enhanced New Needed Opportunity for Better Life and Education for Students with Disabilities (ENNOBLES) Act. However, the section refers to itself as an "Act" rather than a section. A law should not refer to "an Act" but should specify the sections of law to which the section of law is applicable. The popular name and the acronym are not used anywhere else in law.

The bill amends s. 1007.02, F.S., by removing the popular name and acronym. In addition, s. 1007.02, F.S., is amended to state that the definition of "student with a disability" is applicable to all of chapter 2007, F.S.

Public School Improvement

Section 1008.33(5) and (7), F.S., requires a school to implement one of the turnaround options listed in this section if the school earns a grade of "F" within 2 years of raising its grade from a grade of "F" or that earns a grade of "F" within 2 years after exiting the lowest-performing category under s. 3, chapter 2009 -144, L.O.F. A school classified in the lowest performing category before July 2012 is not required to continue implementing any turnaround options unless the school earns a grade of "F" or a third consecutive "D" for the 2011 - 2012 school year.

[58] Florida Department of Education, Office of Safe Schools, *Teen Dating Violence Prevention*, *available at* http://www.fldoe.org/safeschools/TeenDatingViolence.asp (last visited Mar. 10, 2014).
[59] Section 1006.40(2), F.S.
[60] Section 1006.283, F.S.

A school earning a grade of "F" or a third consecutive "D" for the 2011 - 2012 school year may not restart the number of years it has been considered low performing.

The bill repeals s. 1008.33(5) and (7), F.S., removing the requirement to implement certain turnaround options because the time period for those options has expired.

Supplemental Educational Services

The federal requirement for Florida to provide supplemental educational services (SES) as originally prescribed by the No Child Left Behind Act of 2001 (NCLB) was waived with the approval of Florida's ESEA Flexibility Request on February 9, 2012.[61] Florida's ESEA Flexibility Request was subsequently amended on July 27, 2012, to allow Florida to continue providing SES for the 2012 - 2013 school year.[62]

All SES providers had to be approved by the DOE before services could be provided in the district. Eligible candidates included nonprofit and for-profit entities, as well as school districts. Approved providers were allowed to:

- Set their fee for service within a specified range ($5-$70 per hour per student).
- Tutor up to 10 students simultaneously using the same instructor which is the equivalent of
- $700 per hour for 10 students and 1 instructor.
- Self-report, to DOE, student learning gains, student attendance and completion data, and
- satisfaction surveys completed by parents, district administrators, and school principals. DOE used this information to apply a service designation to each provider of excellent, satisfactory, or unsatisfactory.[63]

In 2011 - 2012, SES providers delivered an average of 19 hours of tutoring services per student at an average cost of $1,050 per student.[64] However, a national study determined that SES programs delivering less than 40 hours of tutoring per year are unlikely to demonstrate statistically significant improvement in student growth math and reading gains.[65]
The bill repeals s. 1008.331, F.S., removing the SES which is no longer required by federal law and not funded by this state. School districts on their own authority and through their funding sources can otherwise provide supplemental educational services.

Best Financial Management Practices for Florida School Districts

Section 1008.35, F.S., requires the commissioner to adopt best financial management practices to be implemented by school districts. The practices must be developed for, but not limited to,

---

[61] *See* Letter of Approval for Florida's ESEA Waiver Request, (2012), *available at* http://www.fldoe.org/esea/pdf/WaiverApprovalLetter.pdf.
[62] *See* Letter of Approval for Florida's ESEA Waiver Exemption Request, (2012), *available at* https://www.ed.gov/policy/eseaflex/secretary-letters/fl-amendment.pdf.
[63] Rule 6A-1.039, F.A.C.
[64] Telephone conversation with staff, Florida Department of Education, Bureau of School Improvement (Feb. 27, 2014).
[65] American Enterprise Institute for Public Policy Research, Center for American Progress, *Tightening up Title I: The implementation and effectiveness of supplemental education services: A review and recommendations for program improvement*, (2012), *available at* http://www.aei.org/files/2012/03/05/-the-implementation-and-effectiveness-of-supplemental-educational-services_17150915643.pdf. (last visited Mar. 4, 2014).

efficient use of resources, compliance with general acceptable accounting principles, performance accountability, and cost control. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the AG are tasked with developing a system by which to review school district implementation of the best practices.[66] Furthermore, OPPAGA is responsible for conducting the reviews, subject to appropriation by the Legislature. The commissioner adopted the best financial management practices on September 4, 1997.[67] The entire best practices review was contingent upon funding. The Legislature has not funded the program since 2002.[68]

The bill repeals s. 1008.35, F.S., which removes the requirement that the commissioner adopt best financial management practices.

Workforce Education Postsecondary Student Fees

Section 1009.22(3)(f), F.S., establishes a maximum increase in resident tuition for any school district or Florida College System institution during the 2007 - 2008 fiscal year of five percent over the tuition charged during the 2006 - 2007 fiscal year.

The bill repeals s. 1009.22(3)(f), F.S., regarding the obsolete 2007 - 2008 resident tuition increase language.

Seminole and Miccosukee Indian Scholarships

In 1963, the Legislature enacted the Seminole and Miccosukee Indian Scholarship program.[69] The purpose of the Seminole and Miccosukee Indian Scholarship program is to encourage and assist students from the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida to pursue postsecondary education. The program is administered by DOE and funding for the program must be provided in the General Appropriations Act (GAA).[70] The Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida determines the amount of the scholarship for their respective applicants within the amount of funds appropriated.

Current law states that all new and existing financial assistance programs authorized under chapter 1009 which are not funded for 3 consecutive years after enactment must stand repealed.[71] Funding for the Seminole and Miccosukee Indian Scholarship program was last appropriated in 2001.[72]

The bill repeals s. 1009.56, F.S., regarding the Seminole and Miccosukee Indian Scholarship program.

---

[66] Section 1008.35(1), F.S.
[67] Office of Program Policy Analysis and Government Accountability, *Best Financial Management Practices for Florida School Districts*, Report No. 97-08, (Oct. 1997), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/9708rpt.pdf. (last visited Mar. 10, 2014).
[68] Telephone conversation with staff, Florida Department of Education (Feb. 27, 2014).
[69] Chapter 63-404, ss. 1-6, Laws of Fla.
[70] Section 1009.56(1), F.S.
[71] Section 1009.96, F.S.
[72] Specific Appropriation 93, Chapter 2001-253, s. 2, Laws of Fla.

The Virgil Hawkins Fellows Assistance Program

In 1988, the Legislature enacted the Virgil Hawkins Fellows Assistance Program[73] The Virgil Hawkins Fellows Assistance Program provides financial assistance for minority students to study law at the Florida State University, the University of Florida, the Florida Agricultural and Mechanical University, and the Florida International University.[74]

Each student that remains in good standing as approved by the law school and pursuant to guidelines of the state board is entitled to receive an award for each academic term.[75] Funding for the program must be as provided in the GAA.

Current law states that all new and existing financial assistance programs authorized under chapter 1009 which are not funded for 3 consecutive years after enactment must stand repealed.[76] The Virgil Hawkins Fellows Assistance program was last appropriated funds in 2003.[77]

The bill repeals s. 1009.69, F.S., relating to the Virgil Hawkins Fellows Assistance Program.

Florida Higher Education Loan Authority Act

Part V of chapter 1009 provides a short title: "Florida Higher Education Loan Authority Act." The Act, created in 1982 [78] authorizes, by county ordinance or resolution, the creation of a "_____ County Education Loan Authority." The Florida Higher Education Loan Authority Act was created to make loans to participating higher education institutions for the purpose of providing student loans. If a county ordinance/resolution is established, the law requires the loan authority to report annually to the commissioner. The only county that adopted such an ordinance (St. Johns) repealed its ordinance in 1995. The commissioner has not received any annual reports.[79]

Current law states that all new and existing financial assistance programs authorized under chapter 1009 which are not funded for 3 consecutive years after enactment must stand repealed.[80] The program has been inactive since 1995.[81]

The bill repeals Part V of chapter 1009, relating to the authority to create an Education Loan Authority.

School District Discretionary Tax

In 2009, the Legislature authorized district school boards to levy an additional 0.25 mills for critical capital outlay needs. Alternatively, the additional 0.25 mills may be levied for critical

[73] Chapter 88-099, s. 1, Laws of Fla.
[74] Section 1009.69(1), F.S.
[75] Section 1009.69(2), F.S.
[76] Section 1009.96, F.S.
[77] Specific Appropriation 134 and 135, Chapter 2003-397, s. 2, Laws of Fla.
[78] Chapter 82-241, ss. 1-28, Laws of Fla. (Formerly chapter 240).
[79] E-mail, Florida Department of Education, Office of Governmental Relations (Mar. 5, 2014).
[80] Section 1009.96, F.S.
[81] E-mail, Florida Department of Education, Office of Governmental Relations (Mar. 5, 2014).

operating needs based on a supermajority vote of the district school board and passage of a voter approved referendum in the 2010 general election.[82]

Legislation enacted in 2010, provided that in order for school districts to continue levying the additional 0.25 mills after the 2010 - 2011 fiscal year, the voters must have approved the referendum at the 2010 general election or at a subsequent election is held at any time. No more than one such election may be held during any 12-month period. Any millage so authorized could only be levied for a period not to exceed 2 years or until a change is made pursuant to another millage election, whichever occurs earlier.[83]

In 2011, the Legislature amended the statute so that the authority for district school boards to levy the 0.25 mills would expire on June 30, 2011.[84]

The bill repeals s. 1011.71(3)(b) and (c), F.S., removing the authority for district school boards to levy the additional 0.25 mills.

Teacher Recruitment and Retention

Section 1012.05(2), F.S., requires DOE to develop, in consultation with school district staff, a long range plan for educator recruitment and retention and develop and implement a First Response Center and Teacher Lifeline Network to provide online support to beginning teachers and those that need assistance. The commissioner must take steps that provide flexibility and consistency in meeting the highly qualified teacher criteria defined in the NCLB Act of 2001 through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).[85]

The bill amends s. 1012.05, F.S., by removing the requirement for DOE to develop a long-range plan for educator recruitment and retention. Many districts are not in need of teachers. Those districts needing teachers are better suited to develop recruitment and retention plans applicable to local needs.

The bill eliminates reference to the Teacher Lifeline Network and the First Response Center because the center and network do not exist. The bill removes reference to HOUSSE which no longer exists.

Professional Service Contract

Section 1012.33(9), F.S., provides that, for the 2009 - 2010 and 2010 - 2011 fiscal years, district school boards should not enter into a new professional services contract if the only funds available to pay such contract are from nonrecurring Federal Stabilization Funds. The restriction on district school boards does not extend past the 2010 – 2011 fiscal year.

The bill repeals s. 1012.33(9), F.S., relating to obsolete language affecting fiscal years 2009 - 2010 and 2010 - 2011.

[82] Chapter 2009-059, s. 33, Laws of Fla., codified at s. 1011.71(3)(b), F.S.
[83] Chapter 2010-154, s. 30, Laws of Fla., amending s. 1011.71(3)(b), F.S.
[84] Chapter 2011-055, s. 36, Laws of Fla., amending s. 1011.71(3)(b), F.S.
[85] Section 1012.05(6), F.S.

Speech Language Services

Section 1012.44, F.S., requires the state board to review rules it adopted regarding speech-language services to school districts by October 1, 2003. The state board has reviewed the rules for speech-language services.

The bill amends s. 1012.44, F.S., removing the outdated language requiring the state board to review rules for speech-language services.

Address of Record

Section 1012.561, F.S., requires by January 1, 2005, that each educator and applicant for certification have on file with DOE a current mailing address. The January 1, 2005, date requirement has passed.

The bill amends s. 1012.561, F.S., removing the outdated reporting requirement.

Saving Clause

Section 1012.595, F.S., created in 1986,[86] requires each applicant who was issued a certificate by DOE prior to June 25, 1986, to be entitled to hold such certificate. The certificates are renewed in accordance with the provisions of chapter 86-156 L.O.F.[87]

The bill amends s. 1012.595, F.S., removing the outdated language regarding applicants issued a certificate by DOE prior to June 25, 1986.

Remuneration for State University and Florida College System Presidents

In 2010, s. 1012.885(2), F.S., was created to state that FCS institution presidents may not receive more than $225,000 in remuneration annually from appropriated state funds. The Legislature has since changed that amount to $200,000.[88]

In 2003, s. 1012.975 (2), F.S., was created to state that SUS institution presidents may not receive more than $225,000 in remuneration annually from appropriated state funds. The Legislature has since changed that amount to $200,000.[89]

[86] Formerly s. 231.245 F.S.
[87] Sections of law relating to certification of educational personnel (ss. 231.15, 231.17, and 231.24, F.S.) were set for Sunset repeal on October 1, 1985, unless reviewed and reenacted by the Legislature. The Legislature passed CS/CS/HB 1357, which made various substantive and technical changes in the process used to grant initial and subsequent certificates. The Governor vetoed CS/CS/HB 1357. The DOE readopted the certification rules but, instead of referencing the repealed sections of law as authority for the rule, referenced other sections of law. The Joint Administrative Procedures Committee raised concerns about the law referenced in the rules. The DOE worked with the Legislature to resolve the issues and HB 1183 became law effective June 25, 1986.
[88] Chapter 2011-063, s. 39, Laws of Fla., Chapter 2012-134, s. 38, Laws of Fla., and Chapter 2013-405, s. 21, Laws of Fla.
[89] Chapter 2011-063, s. 41, Laws of Fla., Chapter 2012-134, s. 40, Laws of Fla., and Chapter 2013-045, s. 23, Laws of Fla.

Both sections of law continue to provide conflicting restrictions on the annual remuneration for SUS presidents and FCS presidents.

The bill removes ss. 1012.885(2), and 1012.975(2), F.S., relating to the outdated $225,000 remuneration provisions.

Continuing Education Training

Section 1012.98(12), F.S., requires teachers in grades 1 - 12 to participate in continuing education training provided by the Department of Children and Family Services on identifying and reporting child abuse and neglect.

The bill amends s. 1012.98(12), F.S., to include kindergarten teacher participation in continuing education training provided by the Department of Children and Families.

Substance of Contract

Section 1013.47, F.S., requires: "If 25 percent or more of the costs of any construction project is paid out of a trust fund established pursuant to 31 U.S.C. s. 1243(a)(1) laborers and mechanics employed by contractors or subcontractors on such construction will be paid wages not less than those prevailing on similar construction projects in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act."

The bill amends s. 1013.47, F.S., to remove the above quoted language. Any federal (grant) funds appropriated for construction would include the necessary federal accountability requirements in accordance with the Davis-Bacon Act. There is no trust fund under 31 U.S.C. s. 1243(a)(1).

Toxic Substance in Construction

Section 1013.49, F.S., requires a contractor intending to use toxic substances enumerated in the Florida Substance List in the construction, repair, or maintenance of educational facilities to notify the district school superintendent or public postsecondary institution president in writing at least three working days prior to using the substance. Toxic substance usage is already governed by the Florida Building Code and the State Requirements for Educational Facilities.[90]

The bill repeals s. 1013.49, F.S., removing duplicative requirements related to toxic substance.

Land Acquisition and Facilities Advisory Board

Section 1013.512, F.S., requires OPPAGA and the Auditor General to certify to the President of the Senate, the Speaker of the House of Representatives, the Legislative Budget Commission, and Governor when significant deficiencies exist in a school district's land acquisition and facilities operation processes. Upon receipt of certification, an advisory board must be appointed to help the district improve its deficient practices and report to the commissioner a district's progress and corrective actions. "Upon certification by the advisory board that corrective action

[90] E-mail, Florida Department of Education, Office of Governmental Relations (Mar. 5, 2014).

has been taken, each Land Acquisition and Facilities Advisory Board shall be disbanded." Only one such board was ever appointed: The Miami-Dade Land Acquisition and Facilities Maintenance Operations Advisory Board. This board was dissolved in 2004.[91] The bill repeals s. 1013.512, F.S., removing the authority to authorize a Land Acquisition and Facilities Advisory Board.

Emergency Rule Adoption

Section 20 of chapter 2010-24, L.O.F., authorizes the Department of Revenue (DOR) to adopt emergency rules for s. 1012.796, F.S.[92] DOR states that the authority to adopt emergency rules is no longer needed.[93]

The bill repeals Section 20 of chapter 2010-24, L.O.F., removing outdated DOR emergency rulemaking authority.

The bill has an effective date upon becoming law.

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.

[91] Office of Program Policy Analysis and Government Accountability, *Special Review-Land Acquisition Practices of the Miami-Dade County School Board*, Report No. 01-26 (May 2001), available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0126rpt.pdf. (last visited Mar. 10, 2014).
[92] Section 1012.796, F. S.
[93] Telephone conversation with staff, Florida Department of Revenue (February 26, 2014).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 120.74, 120.81, 409.1451, 496.404, 775.215, 984.151, 1000.21, 1001.10, 1001.26, 1001.34, 1002.20, 1002.31, 1002.3105, 1002.321, 1002.33, 1002.34, 1002.345, 1002.39, 1002.41, 1002.45, 1002.455, 1003.01, 1003.02, 1003.03, 1003.41, 1003.4156, 1003.4281, 1003.4282, 1003.4285, 1003.438, 1003.49, 1003.493, 1003.4935, 1003.57, 1003.621, 1004.0961, 1004.935, 1006.147, 1006.15, 1006.28, 1006.31, 1006.34, 1006.40, 1006.42, 1007.02, 1007.2615, 1007.263, 1007.264, 1007.265, 1007.271, 1008.22, 1008.25, 1008.33, 1008.3415, 1009.22, 1009.40, 1009.531, 1009.532, 1009.536, 1009.91, 1009.94, 1011.62, 1011.80, 1012.05, 1012.22, 1012.34, 1012.44, 1012.561, 1012.885, 1012.975, 1012.98, 1013.35 and 1013.47.

This bill repeals the following sections of the Florida Statutes: 1000.01 (5), 1000.33, 1000.37, 1001.25, 1001.47 (7), 1001.50 (6), 1001.62, 1001.73 (3), 1002.415, 1002.65, 1003.428, 1003.451 (5), 1004.02 (4), 1004.3825, 1004.387, 1004.445 (2), 1004.75, 1006.141, 1006.148 (2), 1008.331, 1008.35, 1009.56, 1009.69, 1009.99, 1009.991, 1009.992, 1009.993, 1009.994, 1009.995, 1009.996, 1009.9965, 1009.997, 1009.9975, 1009.9976, 1009.9977, 1009.9978, 1009.9979, 1009.998, 1009.9981, 1009.9982, 1009.9983, 1009.9984, 1009.9985, 1009.9986, 1009.9987, 1009.9988, 1009.9989, 1009.9990, 1009.9991, 1009.9992, 1009.9993, 1009.9994, 1011.71 (3) (b) and (c), 1011.76 (4), 1012.33 (9), 1012.595, 1013.49, and 1013.512.

The bill repeals section 20 of Chapter 2010-24, an unnumbered section of Florida law.

IX. Additional Information:

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

CS/CS by Rules on April 9, 2014:
The committee substitute:

- Adds a process by which a district school board may, subject to the approval of the electors in a referendum, modify the membership of the school board and the number of members to be elected by residence areas or at large.

CS by Education on March 25, 2014:
The committee substitute:

- Omits the repeal of provisions relating to the Learning Gateway program;
- Adds the continuation of the Adults with Disabilities Workforce Education Pilot program through June 30, 2016, and permits a student to remain in the program until he or she graduates from high school or reaches the age of 40, whichever occurs first;

- Deletes reference to an obsolete provision related to district audits;
- Omits the repeal of the provision related to cooperative development and use of satellite facilities by private industry and district school boards; and
- Omits the provisions related to exemptions from ad valorem taxes for portions of land and facility used by charter schools.

B. Amendments:

None.

913102

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 464 and 465
insert:

Section 15. Section 1001.34, Florida Statutes, is amended to read:

1001.34 Membership of district school board.—

(1) Each district school board shall be composed of not less than five members. Each member of the district school board shall be a qualified elector of the district in which she or he serves, shall be a resident of the district school board member

913102

residence area from which she or he is elected, and shall maintain said residency throughout her or his term of office.

(2) A district school board may modify the number of members on its board by adopting a resolution that establishes the total number of members on the board, which may not be less than five, and the number of members who shall be elected by residence areas or elected at large. The resolution must specify an orderly method and procedure for modifying the membership of the board, including staggering terms of additional members as necessary. If the resolution is adopted, the district school board shall submit to the electors for approval at a referendum held at the next primary or general election the question of whether the number of board members should be modified in accordance with the resolution adopted by the district school board. If the referendum is approved, election of additional school board members may occur at any primary, general, or otherwise-called special election.

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

And the title is amended as follows:

Delete line 29

and insert:

penalties; amending s. 1001.34, F.S.; establishing a process for modifying the membership of a district school board; providing for a referendum; repealing ss. 1001.47(7) and 1001.50(6),

248138

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Ring) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 1026 and 1027
insert:

(8) ASSESSMENT AND ACCOUNTABILITY.—

(d) An approved provider's contract must be terminated if the provider receives a school grade of ~~"D" or~~ "F" under s. 1008.34 or a school improvement rating of "Declining" under s. 1008.341 for 2 years during any consecutive 4-year period or has violated any qualification requirement pursuant to subsection (2). A provider that has a contract terminated under this

248138

paragraph may not be an approved provider for a period of at least 1 year after the date upon which the contract was terminated and until the department determines that the provider is in compliance with subsection (2) and has corrected each cause of the provider's low performance.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 1017 - 1018

and insert:

Section 29. Paragraph (b) of subsection (4), paragraph (d) of subsection (8), and subsection (10) of section 1002.45, Florida Statutes, are amended to read:

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

Delete line 57

and insert:

requiring an approved provider's contract to be terminated if the provider receives a school grade of "F," rather than a "D" or "F"; conforming cross-references; amending s. 1002.455,

132132

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Ring) recommended the following:

Senate Amendment to Amendment (248138) (with title amendment)

Delete line 7
and insert:
the provider receives three consecutive ~~a~~ school grades ~~grade~~ of "D" or a school grade of "F" under s.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 31 - 32

132132

and insert:

terminated if the provider receives specified school grades; conforming cross-

By the Committee on Education; and Senator Montford

581-03139-14 20141226c1

A bill to be entitled

An act relating to education; amending s. 11.45, F.S.; requiring the Auditor General to notify the Legislative Auditing Committee if a district school board fails to take corrective action subsequent to an audit; amending s. 120.74, F.S.; exempting educational units from rule review and reporting requirements; amending s. 120.81, F.S.; conforming cross-references; amending s. 409.1451; conforming cross-references; amending s. 496.404, F.S.; conforming cross-references; amending s. 775.215, F.S.; conforming cross-references; amending s. 984.151, F.S.; authorizing a district school superintendent's designee to submit a truancy petition; repealing s. 1000.01(5), F.S., relating to obsolete education governance transfers; amending s. 1000.21, F.S.; revising the definition of the term "Next Generation Sunshine State Standards"; repealing ss. 1000.33 and 1000.37, F.S., relating to the distribution of copies of educational compacts to other states; amending s. 1001.10, F.S.; deleting and revising certain duties of the Commissioner of Education relating to educational plans and programs; repealing s. 1001.25, F.S, relating to educational television; amending s. 1001.26, F.S.; revising Department of Education duties relating to the public broadcasting program system; prohibiting the use of educational television stations for the advancement of political candidates; providing penalties; repealing ss. 1001.47(7) and 1001.50(6),

581-03139-14 20141226c1

F.S., relating to obsolete district school superintendent salary provisions; repealing s. 1001.62, F.S., relating to obsolete provisions for the transfer of benefits arising under local or special acts; repealing s. 1001.73(3), F.S., relating to the abolished Board of Regents as trustee; amending s. 1002.20, F.S.; correcting cross-references and conforming provisions; amending s. 1002.31, F.S.; revising provisions relating to school district controlled open enrollment plans; amending s. 1002.3105, F.S.; conforming provisions; amending s. 1002.321, F.S.; conforming provisions; amending s. 1002.33, F.S.; deleting required training before charter school application; conforming cross-references and provisions; amending s. 1002.34, F.S.; conforming cross-references; revising provisions relating to department assistance to charter technical career centers; amending s. 1002.345, F.S.; revising provisions relating to expedited review of deteriorating financial conditions for a charter school or charter technical career center; deleting an annual reporting requirement; amending s. 1002.39, F.S.; deleting obsolete provisions relating to eligibility for a John M. McKay Scholarship; amending s. 1002.41, F.S.; correcting cross-references; repealing s. 1002.415, F.S., relating to the K-8 Virtual School Program; amending s. 1002.45, F.S.; conforming cross-references; amending s. 1002.455, F.S.; conforming provisions; repealing s. 1002.65,

F.S., relating to aspirational goals for credentials of prekindergarten instructors; amending s. 1003.01, F.S.; conforming cross-references; amending s. 1003.02, F.S.; requiring instructional materials to be consistent with course descriptions; amending s. 1003.03, F.S.; conforming cross-references; amending s. 1003.41, F.S.; deleting an obsolete cost analysis requirement relating to a separate financial literacy course; amending s. 1003.4156, F.S.; revising course and assessment requirements for middle grades students for promotion to high school; providing an exemption for transfer students from certain course grade and assessment requirements; repealing s. 1003.428, F.S., relating to obsolete requirements for high school graduation; amending s. 1003.4281, F.S.; conforming cross-references; amending s. 1003.4282, F.S.; revising course and assessment requirements for the award of a standard high school diploma; providing requirements for a student in an adult general education program to be awarded a standard high school diploma; revising requirements for award of a certificate of completion; providing an exemption for transfer students from certain course grade and assessment requirements; providing specificity regarding course and assessment requirements for graduation for certain cohorts of high school students transitioning to new graduation requirements; providing for future repeal of transition requirements; amending s. 1003.4285, F.S.; revising

requirements for standard high school diploma designations; amending s. 1003.438, F.S.; conforming cross-references; repealing s. 1003.451(5), F.S., relating to State Board of Education rulemaking; amending s. 1003.49, F.S.; conforming cross-references; amending s. 1003.493, F.S.; conforming a cross-reference; amending s. 1003.4935, F.S.; conforming a cross-reference; amending s. 1003.57, F.S., relating to exceptional student instruction; amending s. 1003.621, F.S.; revising audit criteria for academically high-performing school districts; repealing s. 1004.02(4), F.S., relating to the definition of the term "adult high school credit program"; amending s. 1004.0961, F.S.; providing for Board of Governors regulations; repealing s. 1004.3825, F.S., relating to authorization for a medical degree program; repealing s. 1004.387, F.S., relating to authorization for a pharmacy degree program; repealing s. 1004.445(2), F.S., relating to the board of directors of the Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute; repealing s. 1004.75, F.S., relating to training school consolidation pilot projects; amending s. 1004.935, F.S.; revising the effective date of the Adults with Disabilities Workforce Education Pilot Program; increasing the age limitation for a program participant; conforming cross-references; repealing s. 1006.141, F.S., relating to a statewide school safety hotline; amending s. 1006.147, F.S.; deleting obsolete

provisions relating to school district bullying and harassment policies; repealing s. 1006.148(2), F.S., relating to a department-developed model dating violence and abuse policy; amending s. 1006.15, F.S.; conforming cross-references; amending s. 1006.28, F.S.; conforming provisions relating to instructional materials; amending s. 1006.31, F.S.; conforming provisions relating to duties of an instructional materials reviewer; amending s. 1006.34, F.S.; revising provisions relating to standards used in the selection of instructional materials; amending s. 1006.40, F.S.; revising provisions relating to district school board purchase of instructional materials; amending s. 1006.42, F.S.; conforming provisions relating to the responsibility of parents for instructional materials; amending s. 1007.02, F.S.; deleting a popular name and providing applicability for the term "student with a disability"; amending s. 1007.2615, F.S.; deleting obsolete provisions relating to an American Sign Language task force; amending s. 1007.263, F.S.; conforming cross-references; amending ss. 1007.264 and 1007.265, F.S.; conforming provisions; amending s. 1007.271, F.S.; correcting cross-references; amending s. 1008.22, F.S.; conforming and revising provisions relating to the implementation of statewide, standardized comprehensive assessments, end-of-course assessments, and waivers for students with disabilities; requiring the commissioner to publish an

implementation schedule for transition to new assessments; conforming provisions relating to concordant scores and comparative scores for assessments; amending s. 1008.25, F.S.; conforming assessment provisions for student progression; amending s. 1008.33, F.S.; deleting obsolete provisions relating to implementation of certain school turnaround options; repealing s. 1008.331, F.S., relating to supplemental educational services in Title I schools; amending s. 1008.3415, F.S.; correcting a cross-reference; repealing s. 1008.35, F.S., relating to best financial management practices for school districts; amending s. 1009.22, F.S.; deleting obsolete provisions relating to workforce education postsecondary student fees; amending s. 1009.40, F.S.; conforming cross-references; amending s. 1009.531, F.S.; conforming cross-references; amending s. 1009.532, F.S.; correcting cross-references; amending s. 1009.536, F.S.; correcting cross-references; repealing s. 1009.56, F.S., relating to the Seminole and Miccosukee Indian Scholarship Program; repealing s. 1009.69, F.S., relating to the Virgil Hawkins Fellows Assistance Program; amending s. 1009.91, F.S.; conforming a cross-reference; amending s. 1009.94, F.S.; conforming a cross-reference; repealing part V of chapter 1009, F.S., relating to the Florida Higher Education Loan Authority; amending s. 1011.62, F.S.; deleting an obsolete provision; repealing s. 1011.71(3)(b) and (c), F.S., relating to

expired authorization for certain millage levy; repealing s. 1011.76(4), F.S., relating to best financial management practices review under the Small School District Stabilization Program; amending s. 1011.80, F.S.; correcting a cross-reference; amending s. 1012.05, F.S.; deleting department and commissioner duties relating to teacher recruitment and retention; amending s. 1012.22, F.S.; conforming provisions; repealing s. 1012.33(9), F.S., relating to obsolete provisions for payment of professional service contracts; amending s. 1012.34, F.S.; correcting cross-references relating to measuring student performance in personnel evaluations; amending s. 1012.44, F.S.; deleting obsolete provisions; amending s. 1012.561, F.S.; deleting an obsolete provision; repealing s. 1012.595, F.S., relating to an obsolete saving clause for educator certificates; amending s. 1012.885, F.S.; deleting certain provisions relating to remuneration of Florida College System institution presidents; amending s. 1012.975, F.S.; deleting certain provisions relating to remuneration of state university presidents; amending s. 1012.98, F.S.; requiring continuing education training for kindergarten teachers; amending s. 1013.35, F.S.; revising audit requirements for school district educational planning and construction activities; amending s. 1013.47, F.S.; deleting provisions relating to payment of wages of certain persons employed by contractors; repealing s. 1013.49, F.S.,

relating to toxic substances in educational facilities; repealing s. 1013.512, F.S., relating to the Land Acquisition and Facilities Advisory Board; repealing s. 20 of chapter 2010-24, Laws of Florida, relating to Department of Revenue authorization to adopt emergency rules; providing an effective date.

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

Section 1. Paragraph (j) of subsection (7) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(j) The Auditor General shall notify the Legislative Auditing Committee of any financial or operational audit report prepared pursuant to this section which indicates that a district school board, state university, or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial or operational audit reports.

1. The committee may direct the district school board or the governing body of the state university or Florida College System institution to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.

2. If the committee determines that the written statement is not sufficient, the committee may require the chair of the

district school board or the chair of the governing body of the state university or Florida College System institution, or the chair's designee, to appear before the committee.

3. If the committee determines that the district school board, state university, or Florida College System institution has failed to take full corrective action for which there is no justifiable reason or has failed to comply with committee requests made pursuant to this section, the committee shall refer the matter to the State Board of Education or the Board of Governors, as appropriate, to proceed in accordance with s. 1008.32 or s. 1008.322, respectively.

Section 2. Subsection (5) is added to section 120.74, Florida Statutes, to read:

120.74 Agency review, revision, and report.—

(5) An educational unit as defined in s. 120.52(6) is exempt from this section.

Section 3. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282 ~~1003.428~~, ~~s. 1003.429,~~ s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 4. Paragraph (a) of subsection (2) of section 409.1451, Florida Statutes, is amended to read:

409.1451 The Road-to-Independence Program.—

(2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.—

(a) A young adult is eligible for services and support under this subsection if he or she:

1. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;

2. Spent at least 6 months in licensed care before reaching his or her 18th birthday;

3. Earned a standard high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent pursuant to ~~s. 1003.428, s. 1003.4281, s. 1003.429,~~ s. 1003.435, or a special diploma pursuant to s. 1003.438;

4. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term "full-time" means 9 credit hours or the vocational school equivalent. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor;

5. Has reached 18 years of age but is not yet 23 years of age;

6. Has applied, with assistance from the young adult's caregiver and the community-based lead agency, for any other

grants and scholarships for which he or she may qualify;

7. Submitted a Free Application for Federal Student Aid which is complete and error free; and

8. Signed an agreement to allow the department and the community-based care lead agency access to school records.

Section 5. Subsection (8) of section 496.404, Florida Statutes, is amended to read:

496.404 Definitions.—As used in ss. 496.401-496.424:

(8) "Educational institutions" means those institutions and organizations described in s. 212.08(7)(cc)8.a. The term includes private nonprofit organizations, the purpose of which is to raise funds for schools teaching grades kindergarten through grade 12, colleges, and universities, including a ~~any~~ nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, an ~~any~~ educational television network or system established pursuant to ~~s. 1001.25 or~~ s. 1001.26, and a ~~any~~ nonprofit television or radio station that is a part of such network or system and that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The term also includes a nonprofit educational cable consortium that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of educational organizations that hold a valid consumer certificate of exemption and that are either an educational institution as defined in this subsection or

qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code.

Section 6. Paragraph (d) of subsection (1) of section 775.215, Florida Statutes, is amended to read:

775.215 Residency restriction for persons convicted of certain sex offenses.—

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

(d) "School" has the same meaning as provided in s. 1003.01 and includes a private school as defined in s. 1002.01, a voluntary prekindergarten education program as described in s. 1002.53(3), a public school as described in s. 402.3025(1), the Florida School for the Deaf and the Blind, and the Florida Virtual School ~~as~~ established under s. 1002.37~~, and a K-8 Virtual School as established under s. 1002.415,~~ but does not include facilities dedicated exclusively to the education of adults.

Section 7. Subsection (1) of section 984.151, Florida Statutes, is amended to read:

984.151 Truancy petition; prosecution; disposition.—

(1) If the school determines that a student subject to compulsory school attendance has had at least five unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period pursuant to s. 1003.26(1)(b), or has had more than 15 unexcused absences in a 90-calendar-day period, the superintendent of schools or his or her designee may file a truancy petition.

Section 8. Subsection (5) of section 1000.01, Florida Statutes, is repealed.

Section 9. Subsection (7) of section 1000.21, Florida Statutes, is amended to read:

1000.21 Systemwide definitions.—As used in the Florida K-20 Education Code:

(7) "Next Generation Sunshine State Standards" means the state's public K-12 curricular standards~~, including common core standards in English Language Arts and mathematics,~~ adopted under s. 1003.41.

Section 10. Section 1000.33, Florida Statutes, is repealed.

Section 11. Section 1000.37, Florida Statutes, is repealed.

Section 12. Paragraphs (h) and (l) of subsection (6) of section 1001.10, Florida Statutes, are amended to read:

1001.10 Commissioner of Education; general powers and duties.—

(6) Additionally, the commissioner has the following general powers and duties:

~~(h) To develop and implement a plan for cooperating with the Federal Government in carrying out any or all phases of the educational program and to recommend policies for administering funds that are appropriated by Congress and apportioned to the state for any or all educational purposes. The Commissioner of Education shall submit to the Legislature the proposed state plan for the reauthorization of the No Child Left Behind Act before the proposed plan is submitted to federal agencies. The President of the Senate and the Speaker of the House of Representatives shall appoint members of the appropriate education and appropriations committees to serve as a select committee to review the proposed plan.~~

(k)~~(l)~~ To prepare, publish, and disseminate ~~maintain a~~

~~Citizen Information Center responsible for the preparation, publication, and dissemination of~~ user-friendly materials relating to the state's education system, including the state's K-12 scholarship programs and the Voluntary Prekindergarten Education Program.

Section 13. Section 1001.25, Florida Statutes, is repealed.

Section 14. Section 1001.26, Florida Statutes, is amended to read:

1001.26 Public broadcasting program system.—

(1) There is created a public broadcasting program system for the state. The department shall provide funds, as specifically appropriated in the General Appropriations Act, to educational television stations qualified by the Corporation for Public Broadcasting that are part of the public broadcasting program system ~~administer this program system pursuant to rules adopted by the State Board of Education. This program system must complement and share resources with the instructional programming service of the Department of Education and educational UHF, VHF, EBS, and FM stations in the state~~. The program system must include:

(a) Support for existing Corporation for Public Broadcasting qualified program system educational television stations ~~and new stations meeting Corporation for Public Broadcasting qualifications and providing a first service to an audience that does not currently receive a broadcast signal or providing a significant new program service as defined by rule by the State Board of Education~~.

(b) Maintenance of quality broadcast capability for educational stations that are part of the program system.

(c) Interconnection of all educational stations that are part of the program system for simultaneous broadcast and of such stations with all universities and other institutions as necessary for sharing of resources and delivery of programming.

(d) Establishment and maintenance of a capability for statewide program distribution with facilities and staff, provided such facilities and staff complement and strengthen existing ~~or future~~ educational television stations ~~in accordance with paragraph (a) and s. 1001.25(2)(c)~~.

(e) Provision of both statewide programming funds and station programming support for educational television to meet statewide priorities. Priorities for station programming need not be the same as priorities for programming to be used statewide. Station programming may include, but shall not be limited to, citizens' participation programs, music and fine arts programs, coverage of public hearings and governmental meetings, equal air time for political candidates, and other public interest programming.

(2)~~(a)~~ The Department of Education ~~is responsible for implementing the provisions of this section pursuant to s. 282.702 and~~ may employ personnel, acquire equipment and facilities, and perform all duties necessary for carrying out the purposes and objectives of this section.

~~(b) The department shall provide through educational television and other electronic media a means of extending educational services to all the state system of public education. The department shall recommend to the State Board of Education rules necessary to provide such services.~~

~~(c) The department is authorized to provide equipment, funds, and other services to extend and update both the existing and the proposed educational television systems of tax-supported and nonprofit, corporate-owned facilities. All stations funded must be qualified by the Corporation for Public Broadcasting. New stations eligible for funding shall provide a first service to an audience that is not currently receiving a broadcast signal or provide a significant new program service as defined by State Board of Education rules. Funds appropriated to the department for educational television may be used by the department for educational television only.~~

(3)(a) The facilities, plant, or personnel of an educational television station that is supported in whole or in part by state funds may not be used directly or indirectly for the promotion, advertisement, or advancement of a political candidate for a municipal, county, legislative, congressional, or state office. However, fair, open, and free discussion between political candidates for municipal, county, legislative, congressional, or state office may be permitted in order to help materially reduce the excessive cost of campaigns and to ensure that the state's citizens are fully informed about issues and candidates in campaigns. This paragraph applies to the advocacy for, or opposition to, a specific existing or proposed program of governmental action, which includes, but is not limited to, constitutional amendments, tax referenda, and bond issues. This paragraph shall be implemented in accordance with rules of the State Board of Education.

(b) A violation of a prohibition contained in this subsection is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Subsection (7) of section 1001.47, Florida Statutes, is repealed.

Section 16. Subsection (6) of section 1001.50, Florida Statutes, is repealed.

Section 17. Section 1001.62, Florida Statutes, is repealed.

Section 18. Subsection (3) of section 1001.73, Florida Statutes, is repealed.

Section 19. Subsections (8), (16), and (21) of section 1002.20, Florida Statutes, are amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(8) STUDENTS WITH DISABILITIES.—Parents of public school students with disabilities and parents of public school students in residential care facilities are entitled to notice and due process in accordance with the provisions of ss. 1003.57 and 1003.58. Public school students with disabilities must be provided the opportunity to meet the graduation requirements for a standard high school diploma as set forth in s. 1003.4282 in accordance with the provisions of ss. 1003.57 and 1008.22 ~~s. 1003.428(3)~~. Pursuant to s. 1003.438, certain public school students with disabilities may be awarded a special diploma upon high school graduation.

(16) SCHOOL ACCOUNTABILITY AND SCHOOL IMPROVEMENT RATING REPORTS.—Parents of public school students are entitled to an easy-to-read report card about the school's grade designation

or, if applicable under s. 1008.341, the school's improvement rating, and the school's ~~school~~ accountability report, including the school financial report as required under s. 1010.215~~, and school improvement rating of their child's school in accordance with the provisions of ss. 1008.22, 1003.02(3), and 1010.215(5)~~.

(21) PARENTAL INPUT AND MEETINGS.—

(a) *Meetings with school district personnel.*—Parents of public school students may be accompanied by another adult of their choice at a ~~any~~ meeting with school district personnel. School district personnel may not object to the attendance of such adult or discourage or attempt to discourage, through an ~~any~~ action, statement, or other means, the parents of students with disabilities from inviting another person of their choice to attend a ~~any~~ meeting. Such prohibited actions include, but are not limited to, attempted or actual coercion or harassment of parents or students or retaliation or threats of consequences to parents or students.

1. Such meetings include, but are not limited to, meetings related to: the eligibility for exceptional student education or related services; the development of an individual family support plan (IFSP); the development of an individual education plan (IEP); the development of a 504 accommodation plan issued under s. 504 of the Rehabilitation Act of 1973; the transition of a student from early intervention services to other services; the development of postsecondary goals for a student with a disability and the transition services needed to reach those goals; and other issues that may affect the ~~a student's~~ educational environment, discipline, or placement of a student with a disability.

2. The parents and school district personnel attending the meeting shall sign a document at the meeting's conclusion which states whether any school district personnel have prohibited, discouraged, or attempted to discourage the parents from inviting a person of their choice to the meeting.

~~(b) *School district best financial management practice reviews.*—Public school students and their parents may provide input regarding their concerns about the operations and management of the school district both during and after the conduct of a school district best financial management practices review, in accordance with the provisions of s. 1008.35.~~

(b) ~~(c)~~ *District school board educational facilities programs.*—Parents of public school students and other members of the public have the right to receive proper public notice and opportunity for public comment regarding the district school board's educational facilities work program, in accordance with the provisions of s. 1013.35.

Section 20. Subsections (2) through (8) of section 1002.31, Florida Statutes, are amended to read:

1002.31 Controlled open enrollment; public school parental choice.—

(2) Each district school board may offer controlled open enrollment within the public schools which is~~. The controlled open enrollment program shall be offered~~ in addition to the existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.

(3) Each district school board offering controlled open enrollment shall adopt by rule and post on its website ~~develop~~ a

controlled open enrollment plan which must: ~~describes the implementation of subsection (2).~~

(a) ~~(4) School districts shall~~ Adhere to federal desegregation requirements. ~~No controlled open enrollment plan that conflicts with federal desegregation orders shall be implemented.~~

~~(5) Each school district shall develop a system of priorities for its plan that includes consideration of the following:~~

(b) ~~(a)~~ Include an application process required to participate in ~~the~~ controlled open enrollment ~~program.~~

~~(b) A process~~ that allows parents to declare school preferences, including~~.~~

~~(c) A process that encourages~~ placement of siblings within the same school.

(c) ~~(d)~~ Provide a lottery procedure ~~used by the school district~~ to determine student assignment and establish~~.~~

~~(e)~~ an appeals process for hardship cases.

(d) Afford parents of students in multiple session schools preferred access to controlled open enrollment.

(e) ~~(f) The procedures to~~ Maintain socioeconomic, demographic, and racial balance.

(f) ~~(g)~~ Address the availability of transportation.

~~(h) A process that promotes strong parental involvement, including the designation of a parent liaison.~~

~~(i) A strategy that establishes a clearinghouse of information designed to assist parents in making informed choices.~~

~~(6) Plans shall be submitted to the Commissioner of~~

~~Education. The Commissioner of Education shall develop an annual report on the status of school choice and deliver the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days prior to the convening of the regular session of the Legislature~~.

~~(7) Notwithstanding any provision of this section, a school district with schools operating on both multiple session schedules and single session schedules shall afford parents of students in multiple session schools preferred access to the controlled open enrollment program of the school district.~~

(4)~~(8)~~ In accordance with the reporting requirements of s. 1011.62, each district school board shall annually report the number of students ~~applying for and~~ attending the various types of public schools of choice in the district, including schools such as virtual instruction programs, magnet schools, and public charter schools, according to rules adopted by the State Board of Education.

Section 21. Subsection (5) of section 1002.3105, Florida Statutes, is amended to read:

1002.3105 Academically Challenging Curriculum to Enhance Learning (ACCEL) options.—

(5) AWARD OF A STANDARD HIGH SCHOOL DIPLOMA.—A student who meets the applicable grade 9 cohort graduation requirements of s. 1003.4282(3)(a)-(e) or s. 1003.4282(10)(a)1.-5., (b)1.-5., (c)1.-5., or (d)1.-5., earns three credits in electives, and earns a cumulative grade point average (GPA) of 2.0 on a 4.0 scale shall be awarded a standard high school diploma in a form prescribed by the State Board of Education.

Section 22. Subsection (3) of section 1002.321, Florida

Statutes, is amended to read:

1002.321 Digital learning.—

(3) DIGITAL PREPARATION.—As required under s. 1003.4282, a ~~Each~~ student entering grade 9 in the 2011-2012 school year and thereafter who seeks a high school diploma must take ~~graduate from high school having taken~~ at least one online course~~, as provided in s. 1003.428~~.

Section 23. Paragraph (a) of subsection (6), paragraph (a) of subsection (7), and subsection (25) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level

or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Contains ~~Documents that the applicant has participated in the training required in subparagraph (f)2. A sponsor may require an applicant to provide~~ additional information a sponsor may require, which shall be attached as an addendum to the charter school application described in this paragraph.

7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods

to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a

minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and

efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1002.3105(5), s. 1003.4281, ~~1003.428~~ or s. 1003.4282.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the

charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location. The

sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal,

assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(25) LOCAL EDUCATIONAL AGENCY STATUS FOR CERTAIN CHARTER SCHOOL SYSTEMS.—A charter school system's governing board ~~system~~ shall be designated a local educational agency for the purpose of receiving federal funds, the same as though the charter school system were a school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsoring district school board and the Department of Education in which the governing board of the charter school system accepts the full responsibility for all local education agency requirements and the charter school system meets all of the following:

(a) Includes both conversion charter schools and nonconversion charter schools;

(b) Has all schools located in the same county;

(c) Has a total enrollment exceeding the total enrollment of at least one school district in the state;

(d) Has the same governing board; and

(e) Does not contract with a for-profit service provider for management of school operations.

Such designation does not apply to other provisions unless specifically provided in law.

Section 24. Paragraph (g) of subsection (4) and paragraph (d) of subsection (6) of section 1002.34, Florida Statutes, are amended to read:

1002.34 Charter technical career centers.—

(4) CHARTER.—A sponsor may designate centers as provided in this section. An application to establish a center may be submitted by a sponsor or another organization that is determined, by rule of the State Board of Education, to be appropriate. However, an independent school is not eligible for status as a center. The charter must be signed by the governing body of the center and the sponsor and must be approved by the district school board and Florida College System institution board of trustees in whose geographic region the facility is located. If a charter technical career center is established by the conversion to charter status of a public technical center formerly governed by a district school board, the charter status of that center takes precedence in any question of governance. The governance of the center or of any program within the center remains with its board of directors unless the board agrees to a change in governance or its charter is revoked as provided in

subsection (15). Such a conversion charter technical career center is not affected by a change in the governance of public technical centers or of programs within other centers that are or have been governed by district school boards. A charter technical career center, or any program within such a center, that was governed by a district school board and transferred to a Florida College System institution prior to the effective date of this act is not affected by this provision. An applicant who wishes to establish a center must submit to the district school board or Florida College System institution board of trustees, or a consortium of one or more of each, an application on a form developed by the Department of Education which includes:

(g) A method for determining whether a student has satisfied the requirements for graduation specified in s. 1002.3105(5), s. 1003.4281, or s. 1003.4282 ~~1003.428 or s. 1003.429~~ and for completion of a postsecondary certificate or degree.

Students at a center must meet the same testing and academic performance standards as those established by law and rule for students at public schools and public technical centers. The students must also meet any additional assessment indicators that are included within the charter approved by the district school board or Florida College System institution board of trustees.

(6) SPONSOR.—A district school board or Florida College System institution board of trustees or a consortium of one or more of each may sponsor a center in the county in which the board has jurisdiction.

(d)1. The Department of Education shall offer or arrange for training and technical assistance to centers which must include ~~applicants in~~ developing and amending business plans, ~~and~~ estimating and accounting for costs and income, complying with state and federal grant and student performance accountability reporting requirements, implementing good business practices~~. This assistance shall address estimating startup costs, projecting enrollment~~, and identifying ~~the types and amounts of~~ state and federal financial aid ~~assistance~~ the center may be eligible to receive. ~~The training shall include instruction in accurate financial planning and good business practices.~~

2. An applicant must participate in the training provided by the department after approval of its ~~of Education before filing an~~ application but at least 30 days before the first day of classes at the center. The department ~~of Education~~ may provide technical assistance to an applicant upon written request.

Section 25. Paragraphs (a) and (b) of subsection (1) and subsection (3) of section 1002.345, Florida Statutes, are amended to read:

1002.345 Determination of deteriorating financial conditions and financial emergencies for charter schools and charter technical career centers.—This section applies to charter schools operating pursuant to s. 1002.33 and to charter technical career centers operating pursuant to s. 1002.34.

(1) EXPEDITED REVIEW; REQUIREMENTS.—

(a) A charter school or a charter technical career center is subject to an expedited review by the sponsor if one of the

following occurs:

1. Failure to provide for an audit required by s. 218.39.

2. Failure to comply with reporting requirements pursuant to s. 1002.33(9) or s. 1002.34(11)(f) or (14).

3. A deteriorating financial condition identified through an annual audit pursuant to s. 218.39(5), ~~or~~ a monthly financial statement pursuant to s. 1002.33(9)(g) or s. 1002.34(11)(f), or a quarterly financial statement pursuant to s. 1002.331(2)(c). "Deteriorating financial condition" means a circumstance that significantly impairs the ability of a charter school or a charter technical career center to generate enough revenues to meet its expenditures without causing the occurrence of a condition described in s. 218.503(1).

4. Notification pursuant to s. 218.503(2) that one or more of the conditions specified in s. 218.503(1) have occurred or will occur if action is not taken to assist the charter school or charter technical career center.

(b) A sponsor shall notify the governing board and the Commissioner of Education within 7 business days after one or more of the conditions specified in paragraph (a) occur.

~~(3) REPORT.—The Commissioner of Education shall annually report to the State Board of Education each charter school and charter technical career center that is subject to a financial recovery plan or a corrective action plan under this section.~~

Section 26. Paragraph (a) of subsection (2) of section 1002.39, Florida Statutes, is amended to read:

1002.39 The John M. McKay Scholarships for Students with Disabilities Program.—There is established a program that is separate and distinct from the Opportunity Scholarship Program

and is named the John M. McKay Scholarships for Students with Disabilities Program.

(2) JOHN M. MCKAY SCHOLARSHIP ELIGIBILITY.—The parent of a student with a disability may request and receive from the state a John M. McKay Scholarship for the child to enroll in and attend a private school in accordance with this section if:

(a) The student has:

1. Received specialized instructional services under the Voluntary Prekindergarten Education Program pursuant to s. 1002.66 during the previous school year and the student has a current individual educational plan developed by the local school board in accordance with rules of the State Board of Education for the John M. McKay Scholarships for Students with Disabilities Program or a 504 accommodation plan has been issued under s. 504 of the Rehabilitation Act of 1973; or

2. Spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind. For purposes of this subparagraph, prior school year in attendance means that the student was enrolled and reported by:

a. A school district for funding during the preceding October and February Florida Education Finance Program surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if funded under the Florida Education Finance Program;

b. The Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or

c. A school district for funding during the preceding October and February Florida Education Finance Program surveys,

was at least 4 years of age when so enrolled and reported, and was eligible for services under s. 1003.21(1)(e)~~; or~~

~~3. Been enrolled and reported by a school district for funding, during the October and February Florida Education Finance Program surveys, in any of the 5 years prior to the 2010-2011 fiscal year; has a current individualized educational plan developed by the district school board in accordance with rules of the State Board of Education for the John M. McKay Scholarship Program no later than June 30, 2011; and receives a first-time John M. McKay scholarship for the 2011-2012 school year. Upon request of the parent, the local school district shall complete a matrix of services as required in subparagraph (5)(b)1. for a student requesting a current individualized educational plan in accordance with the provisions of this subparagraph~~.

However, a dependent child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country due to a parent's permanent change of station orders is exempt from this paragraph but must meet all other eligibility requirements to participate in the program.

Section 27. Subsection (5) of section 1002.41, Florida Statutes, is amended to read:

1002.41 Home education programs.—

(5) Home education students may participate in the Bright Futures Scholarship Program in accordance with the provisions of ss. 1009.53-1009.538 ~~1009.53-1009.539~~.

Section 28. Section 1002.415, Florida Statutes, is

repealed.

Section 29. Paragraph (b) of subsection (4) and subsection (10) of section 1002.45, Florida Statutes, are amended to read:

1002.45 Virtual instruction programs.—

(4) CONTRACT REQUIREMENTS.—Each contract with an approved provider must at minimum:

(b) Provide a method for determining that a student has satisfied the requirements for graduation in s. 1002.3105(5), s. 1003.4281, ~~1003.428~~ or s. 1003.4282 if the contract is for the provision of a full-time virtual instruction program to students in grades 9 through 12.

(10) MARKETING.—Each school district shall provide information to parents and students about the ~~parent's and~~ student's right to participate in a virtual instruction program under this section and in courses offered by the Florida Virtual School under s. 1002.37.

Section 30. Paragraph (c) of subsection (2) of section 1002.455, Florida Statutes, is amended to read:

1002.455 Student eligibility for K-12 virtual instruction.—

(2) A student is eligible to participate in virtual instruction if:

(c) The student was enrolled during the prior school year in a virtual instruction program under s. 1002.45~~, the K-8 Virtual School Program under s. 1002.415,~~ or a full-time Florida Virtual School program under s. 1002.37(8)(a);

Section 31. Section 1002.65, Florida Statutes, is repealed.

Section 32. Subsection (14) of section 1003.01, Florida Statutes, is amended to read:

1003.01 Definitions.—As used in this chapter, the term:

(14) "Core-curricula courses" means:

(a) Courses in language arts/reading, mathematics, social studies, and science in prekindergarten through grade 3, excluding ~~any~~ extracurricular courses pursuant to subsection (15);

(b) Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level and courses required for middle school promotion, excluding ~~any~~ extracurricular courses pursuant to subsection (15);

(c) Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level and courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessment, excluding ~~any~~ extracurricular courses pursuant to subsection (15);

(d) Exceptional student education courses; and

(e) English for Speakers of Other Languages courses.

The term is limited in meaning and used for the sole purpose of designating classes that are subject to the maximum class size requirements established in s. 1, Art. IX of the State Constitution. This term does not include courses offered under ss. 1002.321(4)(e), 1002.33(7)(a)2.b., 1002.37, ~~1002.415,~~ 1002.45, and 1003.499.

Section 33. Paragraph (d) of subsection (1) of section 1003.02, Florida Statutes, is amended to read:

1003.02 District school board operation and control of public K-12 education within the school district.—As provided in part II of chapter 1001, district school boards are

constitutionally and statutorily charged with the operation and control of public K-12 education within their school district. The district school boards must establish, organize, and operate their public K-12 schools and educational programs, employees, and facilities. Their responsibilities include staff development, public K-12 school student education including education for exceptional students and students in juvenile justice programs, special programs, adult education programs, and career education programs. Additionally, district school boards must:

(1) Provide for the proper accounting for all students of school age, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students in the following fields:

(d) *Courses of study and instructional materials.*—

1. Provide adequate instructional materials for all students as follows and in accordance with the requirements of chapter 1006, in the core courses of mathematics, language arts, social studies, science, reading, and literature, except for instruction for which the school advisory council approves the use of a program that does not include a textbook as a major tool of instruction.

2. Adopt courses of study for use in the schools of the district.

3. Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials as may be needed, and ensure that instructional materials used in the district are consistent with the district

goals and objectives and the course descriptions ~~curriculum frameworks~~ approved by the State Board of Education, as well as with the state and school district performance standards required by law and state board rule.

Section 34. Paragraph (c) of subsection (3) and subsection (6) of section 1003.03, Florida Statutes, are amended to read:

1003.03 Maximum class size.—

(3) IMPLEMENTATION OPTIONS.—District school boards must consider, but are not limited to, implementing the following items in order to meet the constitutional class size maximums described in subsection (1):

(c)1. Repeal district school board policies that require students to earn more than the 24 credits ~~required under s. 1003.428~~ to graduate from high school.

2. Implement the early graduation options ~~option~~ provided in ss. 1002.3105(5) and ~~s.~~ 1003.4281.

(6) COURSES FOR COMPLIANCE.—Consistent with s. ~~the provisions in ss.~~ 1003.01(14) ~~and 1003.428~~, the Department of Education shall identify from the Course Code Directory the core-curricula courses for the purpose of satisfying the maximum class size requirement in this section. The department may adopt rules to implement this subsection, if necessary.

Section 35. Subsection (3) of section 1003.41, Florida Statutes, is amended to read:

1003.41 Next Generation Sunshine State Standards.—

(3) The Commissioner of Education, as needed, shall develop and submit proposed revisions to the standards for review and comment by Florida educators, school administrators, representatives of the Florida College System institutions and

state universities who have expertise in the content knowledge and skills necessary to prepare a student for postsecondary education and careers, business and industry leaders, and the public. The commissioner, after considering reviews and comments, shall submit the proposed revisions to the State Board of Education for adoption. ~~In addition, the commissioner shall prepare an analysis of the costs associated with implementing a separate, one-half credit course in financial literacy, including estimated costs for instructional personnel, training, and the development or purchase of instructional materials. The commissioner shall work with one or more nonprofit organizations with proven expertise in the area of personal finance, consider free resources that can be utilized for instructional materials, and provide data on the implementation of such a course in other states. The commissioner shall provide the cost analysis to the President of the Senate and the Speaker of the House of Representatives by October 1, 2013.~~

Section 36. Paragraphs (b) and (c) of subsection (1) and subsections (2) and (3) of section 1003.4156, Florida Statutes, are amended to read:

1003.4156 General requirements for middle grades promotion.—

(1) In order for a student to be promoted to high school from a school that includes middle grades 6, 7, and 8, the student must successfully complete the following courses:

(b) Three middle grades or higher courses in mathematics. Each school that includes middle grades must offer at least one high school level mathematics course for which students may earn high school credit. Successful completion of a high school level

Algebra I or Geometry course is not contingent upon the student's performance on the statewide, standardized end-of-course (EOC) assessment ~~or, upon transition to common core assessments, the common core Algebra I or geometry assessments required under s. 1008.22~~. ~~However, beginning with the 2011-2012 school year,~~ To earn high school credit for Algebra I, a middle grades student must take the statewide, standardized Algebra I EOC assessment and pass the course, and in addition, beginning with the 2013-2014 school year and thereafter, a student's performance on the Algebra I EOC assessment constitutes 30 percent of the student's final course grade. ~~pass the Algebra I statewide, standardized assessment, and beginning with the 2012-2013 school year,~~ To earn high school credit for a Geometry course, a middle grades student must take the statewide, standardized Geometry EOC assessment, which constitutes 30 percent of the student's final course grade, and earn a passing grade in the course.

(c) Three middle grades or higher courses in social studies. Beginning with students entering grade 6 in the 2012-2013 school year, one of these courses must be at least a one-semester civics education course that includes the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States. Beginning with the 2013-2014 school year, each student's performance on the statewide, standardized EOC assessment in civics education required under

s. 1008.22 constitutes 30 percent of the student's final course grade. A middle grades student who transfers into the state's public school system from out of country, out of state, a private school, or a home education program after the beginning of the second term of grade 8 is not required to meet the civics education requirement for promotion from the middle grades if the student's transcript documents passage of three courses in social studies or two year-long courses in social studies that include coverage of civics education.

Each school must inform parents about the course curriculum and activities. Each student shall complete a personal education plan that must be signed by the student and the student's parent. The Department of Education shall develop course frameworks and professional development materials for the career and education planning course. The course may be implemented as a stand-alone course or integrated into another course or courses. The Commissioner of Education shall collect longitudinal high school course enrollment data by student ethnicity in order to analyze course-taking patterns.

(2) If a middle grades student scores Level 1 or Level 2 on the statewide, standardized ~~FCAT~~ Reading assessment or, when implemented, ~~the state transitions to common core assessments on~~ the English Language Arts (ELA) assessment ~~assessments required under s. 1008.22~~, the following year the student must enroll in and complete a remedial course or a content area course in which remediation strategies are incorporated into course content delivery. The department shall provide guidance on appropriate strategies for diagnosing and meeting the varying instructional

needs of students performing below grade level.

(3) If a middle grades student scores Level 1 or Level 2 on the statewide, standardized ~~FCAT~~ Mathematics assessment ~~or, when the state transitions to common core assessments, on the mathematics common core assessments required under s. 1008.22~~, the following year the student must receive remediation, which may be integrated into the student's required mathematics courses.

Section 37. Section 1003.428, Florida Statutes, is repealed.

Section 38. Subsection (1) of section 1003.4281, Florida Statutes, is amended to read:

1003.4281 Early high school graduation.—

(1) The purpose of this section is to provide a student the option of early graduation and receipt of a standard high school diploma if the student earns 24 credits and meets the graduation requirements set forth in ~~s. 1003.428 or~~ s. 1003.4282~~, as applicable~~. For purposes of this section, the term "early graduation" means graduation from high school in less than 8 semesters or the equivalent.

Section 39. Paragraphs (a), (b), (c), and (f) of subsection (3), subsections (4), (5), (7), and (8), and paragraphs (a) and (c) of subsection (9) of section 1003.4282, Florida Statutes, are amended, subsection (10) is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(a) *Four credits in English Language Arts (ELA).*—The four

credits must be in ELA I, II, III, and IV. A student must pass the statewide, standardized ~~10th~~ grade 10 ~~FCAT~~ Reading assessment or, when implemented, the ~~until the state transitions to a common core 10th~~ grade 10 ELA assessment, or earn a concordant score, ~~after which time a student must pass the ELA assessment~~ in order to earn a standard high school diploma.

(b) *Four credits in mathematics.*—A student must earn one credit in Algebra I and one credit in Geometry. A student's performance on the statewide, standardized Algebra I end-of-course (EOC) assessment ~~or common core assessment, as applicable,~~ constitutes 30 percent of the student's final course grade. A student must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, ~~until the state transitions to a common core Algebra I assessment after which time a student must pass the common core assessment~~ in order to earn a standard high school diploma. A student's performance on the statewide, standardized Geometry EOC assessment ~~or common core assessment, as applicable,~~ constitutes 30 percent of the student's final course grade. If ~~When~~ the state administers a statewide, standardized ~~common core~~ Algebra II assessment, a student selecting Algebra II must take the assessment, and the student's performance on the assessment constitutes 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry. ~~Industry certification courses that lead to college credit may substitute~~

~~for up to two math credits.~~

(c) *Three credits in science.*—Two of the three required credits must have a laboratory component. A student must earn one credit in Biology I and two credits in equally rigorous courses. The statewide, standardized Biology I EOC assessment constitutes 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit, except for Biology I. ~~Industry certification courses that lead to college credit may substitute for up to one science credit.~~

(f) *One credit in physical education.*—Physical education must include the integration of health. Participation in an interscholastic sport at the junior varsity or varsity level for two full seasons shall satisfy the one-credit requirement in physical education if the student passes a competency test on personal fitness with a score of "C" or better. The competency test on personal fitness developed by the Department of Education must be used. A district school board may not require that the one credit in physical education be taken during the 9th grade year. Completion of one semester with a grade of "C" or better in a marching band class, in a physical activity class that requires participation in marching band activities as an extracurricular activity, or in a dance class shall satisfy one-half credit in physical education or one-half credit in performing arts. This credit may not be used to satisfy the personal fitness requirement or the requirement for adaptive physical education under an individual education plan (IEP) or

504 plan. Completion of 2 years in a Reserve Officer Training Corps (R.O.T.C.) class, a significant component of which is drills, shall satisfy the one-credit requirement in physical education and the one-credit requirement in performing arts. This credit may not be used to satisfy the personal fitness requirement or the requirement for adaptive physical education under an IEP or 504 plan. ~~This requirement is subject to all of the provisions in s. 1003.428(2)(a)6.~~

(4) ONLINE COURSE REQUIREMENT. ~~Excluding a driver education course,~~ At least one course within the 24 credits required under this section must be completed through online learning. Beginning with students entering grade 9 in the 2013-2014 school year, the required online course may not be a driver education course. A school district may not require a student to take the online course outside the school day or in addition to a student's courses for a given semester. An online course taken in grade 6, grade 7, or grade 8 fulfills this requirement. This requirement is met through an online course offered by the Florida Virtual School, a virtual education provider approved by the State Board of Education, a high school, or an online dual enrollment course. A student who is enrolled in a full-time or part-time virtual instruction program under s. 1002.45 meets this requirement. This requirement does not apply to a student who has an individual education plan under s. 1003.57 which indicates that an online course would be inappropriate or to an out-of-state transfer student who is enrolled in a Florida high school and has 1 academic year or less remaining in high school.

(5) REMEDIATION FOR HIGH SCHOOL STUDENTS.—

(a) Each year a student scores Level 1 or Level 2 on the

statewide, standardized ~~9th~~ grade 9 or ~~10th~~ grade 10 ~~FCAT~~ Reading assessment or, when implemented, the ~~9th~~ grade 9, ~~10th~~ grade 10, or ~~11th~~ grade 11 ELA assessment ~~common core English Language Arts (ELA) assessments~~, the student must be enrolled in and complete an intensive remedial course the following year or be placed in a content area course that includes remediation of skills not acquired by the student.

(b) Each year a student scores Level 1 or Level 2 on the statewide, standardized Algebra I EOC assessment, ~~or upon transition to the common core Algebra I assessment,~~ the student must be enrolled in and complete an intensive remedial course the following year or be placed in a content area course that includes remediation of skills not acquired by the student.

(7) AWARD OF A STANDARD HIGH SCHOOL DIPLOMA.—

(a) A student who earns a cumulative grade point average (GPA) of 2.0 on a 4.0 scale and meets the requirements of this section or s. 1002.3105(5) shall be awarded a standard high school diploma in a form prescribed by the State Board of Education.

(b) An adult student in an adult general education program as provided under s. 1004.93 shall be awarded a standard high school diploma if the student meets the requirements of this section or s. 1002.3105(5), except that:

1. One elective credit may be substituted for the one-credit requirement in fine or performing arts, speech and debate, or practical arts.

2. The requirement that two of the science credits include a laboratory component may be waived by the district school board.

3. The one credit in physical education may be substituted with an elective credit. ~~Notwithstanding any other law to the contrary, all students enrolled in high school as of the 2012-2013 school year who earned a passing grade in Biology I or geometry before the 2013-2014 school year shall be awarded a credit in that course if the student passed the course. The student's performance on the EOC assessment is not required to constitute 30 percent of the student's final course grade.~~

(c) A student who earns ~~fails to earn~~ the required 24 credits, or the required 18 credits under s. 1002.3105(5), but fails to pass the assessments required under s. 1008.22(3) or achieve a 2.0 GPA shall be awarded a certificate of completion in a form prescribed by the State Board of Education. However, a student who is otherwise entitled to a certificate of completion may elect to remain in high school either as a full-time student or a part-time student for up to 1 additional year and receive special instruction designed to remedy his or her identified deficiencies.

(8) UNIFORM TRANSFER OF HIGH SCHOOL CREDITS.—Beginning with the 2012-2013 school year, if a student transfers to a Florida public high school from out of country, out of state, a private school, or a home education program and the student's transcript shows a ~~mathematics~~ credit in Algebra I ~~a course that requires passage of a statewide, standardized assessment in order to earn a standard high school diploma~~, the student must pass the statewide, standardized Algebra I EOC assessment in order to earn a standard high school diploma unless the student earned a comparative score ~~pursuant to s. 1008.22~~, passed a statewide assessment in Algebra I ~~that subject~~ administered by the

transferring entity, or passed the statewide mathematics assessment the transferring entity uses to satisfy the requirements of the Elementary and Secondary Education Act, 20 U.S.C. s. 6301. If a student's transcript shows a credit in high school reading or English Language Arts II or III, in order to earn a standard high school diploma, the student must take and pass the statewide, standardized grade 10 ~~FCAT~~ Reading assessment or, when implemented, the grade 10 ELA assessment, or earn a concordant score ~~on the SAT or ACT as specified by state board rule or, when the state transitions to common core English Language Arts assessments, earn a passing score on the English Language Arts assessment as required under this section~~. If a transfer student's transcript shows a final course grade and course credit in Algebra I, Geometry, Biology I, or United States History, the transferring course final grade and credit shall be honored without the student taking the requisite statewide, standardized EOC assessment and without the assessment results constituting 30 percent of the student's final course grade.

(9) CAREER EDUCATION COURSES THAT SATISFY HIGH SCHOOL CREDIT REQUIREMENTS.—

(a) Participation in career education courses engages students in their high school education, increases academic achievement, enhances employability, and increases postsecondary success. By July 1, 2014, the department shall develop, for approval by the State Board of Education, multiple, additional career education courses or a series of courses that meet the requirements set forth in s. 1003.493(2), (4), and (5) and this subsection and allow students to earn credit in both the career

education course and courses required for high school graduation under this section and s. ~~ss. 1003.428 and~~ 1003.4281.

1. The state board must determine if sufficient academic standards are covered to warrant the award of academic credit.

2. Career education courses must include workforce and digital literacy skills and the integration of required course content with practical applications and designated rigorous coursework that results in one or more industry certifications or clearly articulated credit or advanced standing in a 2-year or 4-year certificate or degree program, which may include high school junior and senior year work-related internships or apprenticeships. The department shall negotiate state licenses for material and testing for industry certifications. The instructional methodology used in these courses must be comprised of authentic projects, problems, and activities for contextually learning the academics.

(c) Regional consortium service organizations established pursuant to s. 1001.451 shall work with school districts, local workforce boards, postsecondary institutions, and local business and industry leaders to create career education courses that meet the requirements set forth in s. 1003.493(2), (4), and (5) and this subsection that students can take to earn required high school course credits. The regional consortium shall submit course recommendations to the department, on behalf of the consortium member districts, for state board approval. A strong emphasis should be placed on online coursework, digital literacy, and workforce literacy as defined in s. 1004.02(26) ~~1004.02(27)~~. For purposes of providing students the opportunity to earn industry certifications, consortiums must secure the

necessary site licenses and testing contracts for use by member districts.

(10) COHORT TRANSITION TO NEW GRADUATION REQUIREMENTS.—The requirements of this section, in addition to applying to students entering grade 9 in the 2013-2014 school year and thereafter, shall also apply to students entering grade 9 before the 2013-2014 school year, except as otherwise provided in this subsection.

(a) A student entering grade 9 before the 2010-2011 school year must earn:

1. Four credits in English/ELA. A student must pass the statewide, standardized grade 10 Reading assessment, or earn a concordant score, in order to graduate with a standard high school diploma.

2. Four credits in mathematics, which must include Algebra I. A student must pass grade 10 FCAT Mathematics, or earn a concordant score, in order to graduate with a standard high school diploma. A student who takes Algebra I or Geometry after the 2010-2011 school year must take the statewide, standardized EOC assessment for the course but is not required to pass the assessment in order to earn course credit. A student's performance on the Algebra I or Geometry EOC assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I.

3. Three credits in science, two of which must have a

laboratory component. A student who takes Biology I after the 2010-2011 school year must take the statewide, standardized Biology I EOC assessment but is not required to pass the assessment in order to earn course credit. A student's performance on the assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics is required. A student who takes United States History after the 2011-2012 school year must take the statewide, standardized United States History EOC assessment but the student's performance on the assessment is not required to constitute 30 percent of the student's final course grade.

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

(b) A student entering grade 9 in the 2010-2011 school year must earn:

1. Four credits in English/ELA. A student must pass the statewide, standardized grade 10 Reading assessment, or earn a concordant score, in order to graduate with a standard high school diploma.

2. Four credits in mathematics, which must include Algebra I and Geometry. The statewide, standardized Algebra I EOC assessment constitutes 30 percent of the student's final course grade. A student who takes Algebra I or Geometry after the 2010-2011 school year must take the statewide, standardized EOC assessment for the course but is not required to pass the assessment in order to earn course credit. A student's performance on the Geometry EOC assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry.

3. Three credits in science, two of which must have a laboratory component. A student who takes Biology I after the 2010-2011 school year must take the statewide, standardized Biology I EOC assessment but is not required to pass the assessment in order to earn course credit. A student's performance on the assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit, except for Biology I.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics is required. A student who takes United States History

after the 2011-2012 school year must take the statewide, standardized United States History EOC assessment but the student's performance on the assessment is not required to constitute 30 percent of the student's final course grade.

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

(c) A student entering grade 9 in the 2011-2012 school year must earn:

1. Four credits in English/ELA. A student must pass the statewide, standardized grade 10 Reading assessment, or earn a concordant score, in order to graduate with a standard high school diploma.

2. Four credits in mathematics, which must include Algebra I and Geometry. A student who takes Algebra I after the 2010-2011 school year must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, in order to earn a standard high school diploma. A student who takes Algebra I or Geometry after the 2010-2011 school year must take the statewide, standardized EOC assessment but is not required to pass the Algebra I or Geometry EOC assessment in order to earn course credit. A student's performance on the Algebra I or Geometry EOC assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics

credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry.

3. Three credits in science, two of which must have a laboratory component. One of the science credits must be Biology I. A student who takes Biology I after the 2010-2011 school year must take the statewide, standardized Biology I EOC assessment but is not required to pass the assessment in order to earn course credit. A student's performance on the assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit, except for Biology I.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics is required. A student who takes United States History after the 2011-2012 school year student must take the statewide, standardized United States History EOC assessment but the student's performance on the assessment is not required to constitute 30 percent of the student's final course grade.

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

8. One online course as provided in subsection (4).

(d) A student entering grade 9 in the 2012-2013 school year must earn:

1. Four credits in English/ELA. A student must pass the statewide, standardized grade 10 Reading assessment, or earn a concordant score, in order to graduate with a standard high school diploma.

2. Four credits in mathematics, which must include Algebra I and Geometry. A student who takes Algebra I after the 2010-2011 school year must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, in order to earn a standard high school diploma. A student who takes Geometry after the 2010-2011 school year must take the statewide, standardized Geometry EOC assessment. A student is not required to pass the statewide, standardized EOC assessment in Algebra I or Geometry in order to earn course credit. A student's performance on the Algebra I or Geometry EOC assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry.

3. Three credits in science, two of which must have a laboratory component. One of the science credits must be Biology I. A student who takes Biology I after the 2010-2011 school year must take the statewide, standardized Biology I EOC assessment but is not required to pass the assessment to earn course credit. A student's performance on the assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement

approved by the State Board of Education may substitute the certification for one science credit, except for Biology I.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics is required. The statewide, standardized United States History EOC assessment constitutes 30 percent of the student's final course grade.

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

8. One online course as provided in subsection (4).

(e) Policy adopted in rule by the district school board may require for any cohort of students that performance on a statewide, standardized EOC assessment constitute 30 percent of a student's final course grade.

(f) This subsection is repealed July 1, 2020.

Section 40. Subsection (1) of section 1003.4285, Florida Statutes, is amended to read:

1003.4285 Standard high school diploma designations.—

(1) Each standard high school diploma shall include, as applicable, the following designations if the student meets the criteria set forth for the designation:

(a) *Scholar designation.*—In addition to the requirements of s. ~~ss. 1003.428 and~~ 1003.4282, ~~as applicable,~~ in order to earn the Scholar designation, a student must satisfy the following requirements:

1. English Language Arts (ELA).—When implemented ~~the state transitions to common core assessments~~, pass the statewide, standardized ~~11th~~ grade 11 ELA ~~common core~~ assessment.

2. Mathematics.—Earn one credit in Algebra II and one credit in statistics or an equally rigorous course. When implemented ~~the state transitions to common core assessments~~, students must pass the statewide, standardized Algebra II ~~common core~~ assessment. Beginning with students entering grade 9 in the 2014-2015 school year, a student must also pass the statewide, standardized Geometry end-of-course (EOC) assessment.

3. Science.—Pass the statewide, standardized Biology I EOC ~~end of course~~ assessment and earn one credit in chemistry or physics and one credit in a course equally rigorous to chemistry or physics. However, a student enrolled in an Advanced Placement (AP), International Baccalaureate (IB), or Advanced International Certificate of Education (AICE) Biology course who takes the respective AP, IB, or AICE Biology assessment and earns the minimum score necessary to earn college credit as identified pursuant to s. 1007.27(2) meets the requirement of this subparagraph without having to take the statewide, standardized Biology I EOC assessment.

4. Social studies.—Pass the statewide, standardized United States History EOC ~~end-of-course~~ assessment. However, a student enrolled in an AP, IB, or AICE course that includes United States History topics who takes the respective AP, IB, or AICE assessment and earns the minimum score necessary to earn college credit as identified pursuant to s. 1007.27(2) meets the requirement of this subparagraph without having to take the statewide, standardized United States History EOC assessment.

5. Foreign language.—Earn two credits in the same foreign language.

6. Electives.—Earn at least one credit in an Advanced Placement, an International Baccalaureate, an Advanced International Certificate of Education, or a dual enrollment course.

(b) *Merit designation.*—In addition to the requirements of s. ~~ss. 1003.428 and~~ 1003.4282, ~~as applicable,~~ in order to earn the Merit designation, a student must attain one or more industry certifications from the list established under s. 1003.492.

Section 41. Section 1003.438, Florida Statutes, is amended to read:

1003.438 Special high school graduation requirements for certain exceptional students.—A student who has been identified, in accordance with rules established by the State Board of Education, as a student with disabilities who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic impairment; an other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; or students who are deaf or hard of hearing or dual sensory impaired shall not be required to meet all requirements of s. 1002.3105(5), s. 1003.4281, ~~1003.428~~ or s. 1003.4282 and shall, upon meeting all applicable requirements prescribed by the district school board pursuant to s. 1008.25, be awarded a special diploma in a form prescribed by the commissioner; however, such special graduation requirements prescribed by the

district school board must include minimum graduation requirements as prescribed by the commissioner. Any such student who meets all special requirements of the district school board, but is unable to meet the appropriate special state minimum requirements, shall be awarded a special certificate of completion in a form prescribed by the commissioner. However, this section does not limit or restrict the right of an exceptional student solely to a special diploma or special certificate of completion. Any such student shall, upon proper request, be afforded the opportunity to fully meet all requirements of s. 1002.3105(5), s. 1003.4281, ~~1003.428~~ or s. 1003.4282 through the standard procedures established therein and thereby to qualify for a standard diploma upon graduation.

Section 42. Subsection (5) of section 1003.451, Florida Statutes, is repealed.

Section 43. Subsection (1) of section 1003.49, Florida Statutes, is amended to read:

1003.49 Graduation and promotion requirements for publicly operated schools.—

(1) Each state or local public agency, including the Department of Children and Family Services, the Department of Corrections, the boards of trustees of universities and Florida College System institutions, and the Board of Trustees of the Florida School for the Deaf and the Blind, which agency is authorized to operate educational programs for students at any level of grades kindergarten through 12, shall be subject to all applicable requirements of ss. 1002.3105(5), 1003.4281, 1003.4282 ~~1003.428, 1003.429~~, 1008.23, and 1008.25. Within the content of these cited statutes each such state or local public

agency or entity shall be considered a "district school board."

Section 44. Paragraph (e) of subsection (4) of section 1003.493, Florida Statutes, is amended to read:

1003.493 Career and professional academies and career-themed courses.—

(4) Each career and professional academy and secondary school providing a career-themed course must:

(e) Deliver academic content through instruction relevant to the career, including intensive reading and mathematics intervention required by s. 1003.4282 ~~1003.428~~, with an emphasis on strengthening reading for information skills.

Section 45. Paragraph (c) of subsection (2) of section 1003.4935, Florida Statutes, is amended to read:

1003.4935 Middle grades career and professional academy courses and career-themed courses.—

(2) Each middle grades career and professional academy or career-themed course must be aligned with at least one high school career and professional academy or career-themed course offered in the district and maintain partnerships with local business and industry and economic development boards. Middle grades career and professional academies and career-themed courses must:

(a) Lead to careers in occupations designated as high-skill, high-wage, and high-demand in the Industry Certification Funding List approved under rules adopted by the State Board of Education;

(b) Integrate content from core subject areas;

(c) Integrate career and professional academy or career-themed course content with intensive reading, English Language

Arts, and mathematics pursuant to s. ~~ss. 1003.428 and~~ 1003.4282;

(d) Coordinate with high schools to maximize opportunities for middle grades students to earn high school credit;

(e) Provide access to virtual instruction courses provided by virtual education providers legislatively authorized to provide part-time instruction to middle grades students. The virtual instruction courses must be aligned to state curriculum standards for middle grades career and professional academy courses or career-themed courses, with priority given to students who have required course deficits;

(f) Provide instruction from highly skilled professionals who hold industry certificates in the career area in which they teach;

(g) Offer externships; and

(h) Provide personalized student advisement that includes a parent-participation component.

Section 46. Paragraph (a) of subsection (1) of section 1003.57, Florida Statutes, is amended to read:

1003.57 Exceptional students instruction.—

(1)(a) For purposes of providing exceptional student instruction under this section:

1. A school district shall use the following terms to describe the instructional setting for a student with a disability, 6 through 21 years of age, who is not educated in a setting accessible to all children who are together at all times:

a. "Exceptional student education center" or "special day school" means a separate public school to which nondisabled peers do not have access.

b. "Other separate environment" means a separate private school, residential facility, or hospital or homebound program.

c. "Regular class" means a class in which a student spends 80 percent or more of the school week with nondisabled peers.

d. "Resource room" means a classroom in which a student spends between 40 percent to 80 percent of the school week with nondisabled peers.

e. "Separate class" means a class in which a student spends less than 40 percent of the school week with nondisabled peers.

2. A school district shall use the term "inclusion" to mean that a student is receiving education in a general education regular class setting, reflecting natural proportions and age-appropriate heterogeneous groups in core academic and elective or special areas within the school community; a student with a disability is a valued member of the classroom and school community; the teachers and administrators support universal education and have knowledge and support available to enable them to effectively teach all children; and a teacher ~~student~~ is provided access to technical assistance in best practices, instructional methods, and supports tailored to the student's needs based on current research.

Section 47. Paragraph (a) of subsection (1) of section 1003.621, Florida Statutes, is amended to read:

1003.621 Academically high-performing school districts.—It is the intent of the Legislature to recognize and reward school districts that demonstrate the ability to consistently maintain or improve their high-performing status. The purpose of this section is to provide high-performing school districts with flexibility in meeting the specific requirements in statute and

rules of the State Board of Education.

(1) ACADEMICALLY HIGH-PERFORMING SCHOOL DISTRICT.—

(a) A school district is an academically high-performing school district if it meets the following criteria:

1.a. ~~Beginning with the 2004-2005 school year,~~ Earns a grade of "A" under s. 1008.34(7) for 2 consecutive years; and

b. Has no district-operated school that earns a grade of "F" under s. 1008.34;

2. Complies with all class size requirements in s. 1, Art. IX of the State Constitution and s. 1003.03; and

3. Has no material weaknesses or instances of material noncompliance noted in the annual financial audit conducted pursuant to s. 11.45 or s. 218.39.

However, a district in which a district-operated school earns a grade of "F" under s. 1008.34 during the 3-year period may not continue to be designated as an academically high-performing school district during the remainder of that 3-year period. The district must meet the criteria in paragraph (a) in order to be redesignated as an academically high-performing school district.

Section 48. Subsection (4) of section 1004.02, Florida Statutes, is repealed.

Section 49. Section 1004.0961, Florida Statutes, is amended to read:

1004.0961 Credit for online courses.—Beginning in the 2015-2016 school year, the State Board of Education shall adopt rules and the Board of Governors shall adopt regulations ~~rules~~ that enable students to earn academic credit for online courses, including massive open online courses, before ~~prior to~~ initial

enrollment at a postsecondary institution. The rules of the State Board of Education and regulations ~~rules~~ of the Board of Governors must include procedures for credential evaluation and the award of credit, including, but not limited to, recommendations for credit by the American Council on Education; equivalency and alignment of coursework with appropriate courses; course descriptions; type and amount of credit that may be awarded; and transfer of credit.

Section 50. Section 1004.3825, Florida Statutes, is repealed.

Section 51. Section 1004.387, Florida Statutes, is repealed.

Section 52. Subsection (2) of section 1004.445, Florida Statutes, is repealed.

Section 53. Section 1004.75, Florida Statutes, is repealed.

Section 54. Subsections (1), (2), and (7) of section 1004.935, Florida Statutes, are amended to read:

1004.935 Adults with Disabilities Workforce Education Pilot Program.—

(1) The Adults with Disabilities Workforce Education Pilot Program is established in the Department of Education through June 30, 2016, ~~for 2 years~~ in Hardee, DeSoto, Manatee, and Sarasota Counties to provide the option of receiving a scholarship for instruction at private schools for up to 30 students who:

(a) Have a disability;

(b) Are 22 years of age;

(c) Are receiving instruction from an instructor in a private school to meet the high school graduation requirements

in s. 1002.3105(5) ~~1003.428~~ or s. 1003.4282;

(d) Do not have a standard high school diploma or a special high school diploma; and

(e) Receive "supported employment services," which means employment that is located or provided in an integrated work setting with earnings paid on a commensurate wage basis and for which continued support is needed for job maintenance.

As used in this section, the term "student with a disability" includes a student who is documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.

(2) A student participating in the pilot program may continue to participate in the program until the student graduates from high school or reaches the age of 40 ~~30~~ years, whichever occurs first.

(7) Funds for the scholarship shall be provided from the appropriation from the school district's Workforce Development Fund in the General Appropriations Act for students who reside in the Hardee County School District, the DeSoto County School District, the Manatee County School District, or the Sarasota County School District. During the ~~2 year~~ pilot program, the scholarship amount granted for an eligible student with a

disability shall be equal to the cost per unit of a full-time equivalent adult general education student, multiplied by the adult general education funding factor, and multiplied by the district cost differential pursuant to the formula required by s. 1011.80(6)(a) for the district in which the student resides.

Section 55. Section 1006.141, Florida Statutes, is repealed.

Section 56. Subsections (4), (5), and (8) of section 1006.147, Florida Statutes, are amended to read:

1006.147 Bullying and harassment prohibited.—

(4) ~~By December 1, 2008,~~ Each school district shall adopt a policy prohibiting bullying and harassment of a ~~any~~ student or employee of a public K-12 educational institution. Each school district's policy shall be in substantial conformity with the Department of Education's model policy ~~mandated in subsection (5)~~. The school district bullying and harassment policy shall afford all students the same protection regardless of their status under the law. The school district may establish separate discrimination policies that include categories of students. The school district shall involve students, parents, teachers, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting the policy. The school district policy must be implemented in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts. The school district policy must contain, at a minimum, the following components:

(a) A statement prohibiting bullying and harassment.

(b) A definition of bullying and a definition of harassment that include the definitions listed in this section.

(c) A description of the type of behavior expected from each student and employee of a public K-12 educational institution.

(d) The consequences for a student or employee of a public K-12 educational institution who commits an act of bullying or harassment.

(e) The consequences for a student or employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment.

(f) A procedure for reporting an act of bullying or harassment, including provisions that permit a person to anonymously report such an act. However, this paragraph does not permit formal disciplinary action to be based solely on an anonymous report.

(g) A procedure for the prompt investigation of a report of bullying or harassment and the persons responsible for the investigation. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and begins with a report of such an act. Incidents that require a reasonable investigation when reported to appropriate school authorities shall include alleged incidents of bullying or harassment allegedly committed against a child while the child is en route to school aboard a school bus or at a school bus stop.

(h) A process to investigate whether a reported act of bullying or harassment is within the scope of the district

school system and, if not, a process for referral of such an act to the appropriate jurisdiction. Computers without web-filtering software or computers with web-filtering software that is disabled shall be used when complaints of cyberbullying are investigated.

(i) A procedure for providing immediate notification to the parents of a victim of bullying or harassment and the parents of the perpetrator of an act of bullying or harassment, as well as notification to all local agencies where criminal charges may be pursued against the perpetrator.

(j) A procedure to refer victims and perpetrators of bullying or harassment for counseling.

(k) A procedure for including incidents of bullying or harassment in the school's report of data concerning school safety and discipline required under s. 1006.09(6). The report must include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report must include in a separate section each reported incident of bullying or harassment that does not meet the criteria of a prohibited act under this section with recommendations regarding such incidents. The Department of Education shall aggregate information contained in the reports.

(l) A procedure for providing instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment, including instruction on recognizing behaviors that lead to bullying and harassment and taking appropriate preventive action based on those observations.

(m) A procedure for regularly reporting to a victim's

parents the actions taken to protect the victim.

(n) A procedure for publicizing the policy, which must include its publication in the code of student conduct required under s. 1006.07(2) and in all employee handbooks.

~~(5) To assist school districts in developing policies prohibiting bullying and harassment, the Department of Education shall develop a model policy that shall be provided to school districts no later than October 1, 2008.~~

(7)~~(8) Distribution of safe schools funds to a school district provided in the 2009-2010 General Appropriations Act is contingent upon and payable to the school district upon the Department of Education's approval of the school district's bullying and harassment policy. The department's approval of each school district's bullying and harassment policy shall be granted upon certification by the department that the school district's policy has been submitted to the department and is in substantial conformity with the department's model bullying and harassment policy as mandated in subsection (5).~~ Distribution of safe schools funds provided to a school district ~~in fiscal year 2010-2011 and thereafter~~ shall be contingent upon and payable to the school district upon the school district's compliance with all reporting procedures contained in this section.

Section 57. Subsection (2) of section 1006.148, Florida Statutes, is repealed.

Section 58. Paragraph (a) of subsection (3) of section 1006.15, Florida Statutes, is amended to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)(a) To be eligible to participate in interscholastic extracurricular student activities, a student must:

1. Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) ~~1003.428~~ or s. 1003.4282 ~~1003.429~~.

2. Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student's parents, if the student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1002.3105(5) ~~1003.428~~ or s. 1003.4282 ~~1003.429~~. At a minimum, the contract must require that the student attend summer school, or its graded equivalent, between grades 9 and 10 or grades 10 and 11, as necessary.

3. Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) ~~1003.428~~ or s. 1003.4282 ~~1003.429~~ during his or her junior or senior year.

4. Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct policies described in s. 1006.07(2). If a student is convicted of, or is found to have committed, a felony or a delinquent act that would have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published district school board policy.

Section 59. Subsection (1) and paragraph (a) of subsection

(2) of section 1006.28, Florida Statutes, are amended to read:

1006.28 Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials.—

(1) DISTRICT SCHOOL BOARD.—The district school board has the duty to provide adequate instructional materials for all students in accordance with the requirements of this part. The term "adequate instructional materials" means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core subject areas ~~courses~~ of mathematics, language arts, social studies, science, reading, and literature. The district school board has the following specific duties:

(a) *Courses of study; adoption.*—Adopt courses of study for use in the schools of the district.

(b) *Instructional materials.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials and furnish such other instructional materials as may be needed. ~~The district school board shall ensure that~~ Instructional materials used must be ~~in the district are~~ consistent with the district goals and objectives and the course descriptions established in rule of the State Board of Education, as well as with the applicable Next Generation Sunshine State ~~and district performance~~ Standards provided for in s. 1003.41 ~~1001.03(1)~~.

(c) *Other instructional materials.*—Provide such other teaching accessories and aids as are needed for the school district's educational program.

(d) *School library media services; establishment and maintenance.*—Establish and maintain a program of school library media services for all public schools in the district, including school library media centers, or school library media centers open to the public, and, in addition such traveling or circulating libraries as may be needed for the proper operation of the district school system.

(2) DISTRICT SCHOOL SUPERINTENDENT.—

(a) The district school superintendent has the duty to recommend such plans for improving, providing, distributing, accounting for, and caring for instructional materials and other instructional aids as will result in general improvement of the district school system, as prescribed in this part, in accordance with adopted district school board rules prescribing the duties and responsibilities of the district school superintendent regarding the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials, and providing for an evaluation of any instructional materials to be requisitioned that have not been used previously in the district's schools. The district school superintendent must keep adequate records and accounts for all financial transactions for funds collected pursuant to subsection (3)~~, as a component of the educational service delivery scope in a school district best financial management practices review under s. 1008.35~~.

Section 60. Subsection (2) of section 1006.31, Florida Statutes, is amended to read:

1006.31 Duties of the Department of Education and school district instructional materials reviewer.—The duties of the instructional materials reviewer are:

(2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To use ~~evaluate carefully all instructional materials submitted, in order to ascertain which instructional materials, if any, submitted for consideration implement~~ the selection criteria listed in s. 1006.34(2)(b) ~~developed by the department~~ and recommend for adoption only those instructional materials aligned with the Next Generation Sunshine State ~~those curricular objectives included within applicable performance~~ Standards provided for in s. 1003.41 ~~1001.03(1)~~.

(a) When recommending instructional materials for use in the schools, each reviewer shall include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.

(b) When recommending instructional materials for use in the schools, each reviewer shall include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) When recommending instructional materials for use in

the schools, each reviewer shall require such materials as he or she deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.

(d) When recommending instructional materials for use in the schools, each reviewer shall require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. A reviewer may not recommend any instructional materials for use in the schools which contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, or occupation.

(e) Any instructional material recommended by each reviewer for use in the schools shall be, to the satisfaction of each reviewer, accurate, objective, and current and suited to the needs and comprehension of students at their respective grade levels. Reviewers shall consider for adoption materials developed for academically talented students such as those enrolled in advanced placement courses.

Section 61. Paragraph (b) of subsection (2) of section 1006.34, Florida Statutes, is amended to read:

1006.34 Powers and duties of the commissioner and the department in selecting and adopting instructional materials.—

(2) SELECTION AND ADOPTION OF INSTRUCTIONAL MATERIALS.—

(b) In the selection of instructional materials, library media, and other reading material used in the public school system, the standards used to determine the propriety of the material shall include:

1. The age of the students who normally could be expected

to have access to the material.

2. The educational purpose to be served by the material. ~~In considering instructional materials for classroom use,~~ Priority shall be given to the selection of materials that align with the Next Generation Sunshine State Standards as provided for in s. 1003.41 ~~which encompass the state and district school board performance standards provided for in s. 1001.03(1)~~ and ~~which~~ include the instructional objectives contained within the curriculum frameworks for career and technical education and adult and adult general education adopted ~~approved~~ by rule of the State Board of Education under s. 1004.92.

3. The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

4. The consideration of the broad racial, ethnic, socioeconomic, and cultural diversity of the students of this state.

Any instructional material containing pornography or otherwise prohibited by s. 847.012 may not be used or made available within any public school.

Section 62. Subsection (2) and paragraph (a) of subsection (3) of section 1006.40, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(2) Each district school board must purchase current instructional materials to provide each student with a major

tool of instruction in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. Such purchase must be made within the first 3 years after the effective date of the adoption cycle unless a district school board or a consortium of school districts has implemented an instructional materials program pursuant to s. 1006.283. ~~For the 2012-2013 mathematics adoption, a district using a comprehensive mathematics instructional materials program adopted in the 2009-2010 adoption shall be deemed in compliance with this subsection if it provides each student with such additional state-adopted materials as may be necessary to align the previously adopted comprehensive program to common core standards and the other criteria of the 2012-2013 mathematics adoption.~~

(3)(a) Beginning with ~~By~~ the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards included on the state-adopted list, except as otherwise authorized in paragraphs (b) and (c). ~~This section does not apply to a district school board or a consortium of school districts which implements an instructional materials program pursuant to s. 1006.283, except that by the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards.~~

(8) Subsections (3), (4), and (6) do not apply to a district school board or a consortium of school districts that implements an instructional materials program pursuant to s.

1006.283 except that, by the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual instructional materials allocation for the purchase of digital or electronic instructional materials that align with state standards adopted by the State Board of Education pursuant to s. 1003.41.

Section 63. Section 1006.42, Florida Statutes, is amended to read:

1006.42 Responsibility of students and parents for instructional materials.—

~~(1)~~ All instructional materials purchased under the provisions of this part are the property of the district school board. When distributed to the students, these instructional materials are on loan to the students while they are pursuing their courses of study and are to be returned at the direction of the school principal or the teacher in charge. Each parent of a student to whom or for whom instructional materials have been issued, is liable for any loss or destruction of, or unnecessary damage to, the instructional materials or for failure of the student to return the instructional materials when directed by the school principal or the teacher in charge, and shall pay for such loss, destruction, or unnecessary damage as provided under s. 1006.28(3) ~~by law~~.

~~(2) Nothing in this part shall be construed to prohibit parents from exercising their right to purchase instructional materials from the district school board.~~

Section 64. Section 1007.02, Florida Statutes, is amended to read:

1007.02 ~~Access to postsecondary education and meaningful~~

~~careers for~~ Students with disabilities; ~~popular name;~~ definition.—

~~(1) This section shall be known by the popular name the "Enhanced New Needed Opportunity for Better Life and Education for Students with Disabilities (ENNOBLES) Act."~~

~~(2)~~ For the purposes of this chapter ~~act~~, the term "student with a disability" means a ~~any~~ student who is documented as having an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; an emotional or behavioral disability; an orthopedic or other health impairment; an autism spectrum disorder; a traumatic brain injury; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia.

Section 65. Paragraph (a) of subsection (1) and subsection (3) of section 1007.2615, Florida Statutes, are amended to read:

1007.2615 American Sign Language; findings; foreign-language credits authorized; teacher licensing.—

(1) LEGISLATIVE FINDINGS; PURPOSE.—

(a) The Legislature finds that:

1. American Sign Language (ASL) is a fully developed visual-gestural language with distinct grammar, syntax, and symbols and is one of hundreds of signed languages of the world.

2. ASL is recognized as the language of the American deaf community and is the fourth most commonly used language in the United States and Canada.

3. The American deaf community is a group of citizens who are members of a unique culture who share ASL as their common language.

~~4. Thirty-three state legislatures have adopted legislation recognizing ASL as a language that should be taught in schools.~~

(3) DUTIES OF COMMISSIONER OF EDUCATION AND STATE BOARD OF EDUCATION; LICENSING OF AMERICAN SIGN LANGUAGE TEACHERS; PLAN FOR POSTSECONDARY EDUCATION PROVIDERS.—

~~(a) The Commissioner of Education shall appoint a seven-member task force that includes representatives from two state universities and one private college or university located within this state which currently offer a 4-year deaf education or sign language interpretation program as a part of their respective curricula, two representatives from the Florida American Sign Language Teachers' Association (FASLTA), and two representatives from Florida College System institutions located within this state which have established Interpreter Training Programs (ITPs). This task force shall develop and submit to the Commissioner of Education a report that contains the most up-to-date information about American Sign Language (ASL) and guidelines for developing and maintaining ASL courses as a part of the curriculum. This information must be made available to any administrator of a public or an independent school upon request of the administrator.~~

(a) ~~(b) By January 1, 2005,~~ The State Board of Education shall adopt rules establishing licensing/certification standards to be applied to teachers who teach American Sign Language (ASL) ~~ASL~~ as part of a school curriculum. ~~In developing the rules, the state board shall consult with the task force established under paragraph (a).~~

(b) ~~(c)~~ An ASL teacher must be certified by the Department of Education ~~by July 1, 2009~~.

(c) ~~(d)~~ The Commissioner of Education shall work with providers of postsecondary education, except for state universities, to develop and implement a plan to ensure that these institutions in this state will accept secondary school credits in ASL as credits in a foreign language and to encourage postsecondary institutions to offer ASL courses to students as a fulfillment of the requirement for studying a foreign language.

Section 66. Subsection (4) of section 1007.263, Florida Statutes, is amended to read:

1007.263 Florida College System institutions; admissions of students.—Each Florida College System institution board of trustees is authorized to adopt rules governing admissions of students subject to this section and rules of the State Board of Education. These rules shall include the following:

(4) A student who has been awarded a special diploma under ~~as defined in~~ s. 1003.438 or a certificate of completion under ~~as defined in~~ s. 1003.4282 ~~1003.428(7)(b)~~ is eligible to enroll in certificate career education programs.

Each board of trustees shall establish policies that notify students about developmental education options for improving their communication or computation skills that are essential to performing college-level work, including tutoring, extended time in gateway courses, free online courses, adult basic education, adult secondary education, or private provider instruction.

Section 67. Subsection (1) of section 1007.264, Florida Statutes, is amended to read:

1007.264 Persons with disabilities; admission to postsecondary educational institutions; substitute requirements;

rules and regulations.—

(1) A ~~Any~~ student with a disability~~, as defined in s. 1007.02(2),~~ who is otherwise eligible shall be eligible for reasonable substitution for any requirement for admission into a public postsecondary educational institution where documentation can be provided that the person's failure to meet the admission requirement is related to the disability.

Section 68. Subsection (1) of section 1007.265, Florida Statutes, is amended to read:

1007.265 Persons with disabilities; graduation, study program admission, and upper-division entry; substitute requirements; rules and regulations.—

(1) A ~~Any~~ student with a disability~~, as defined in s. 1007.02(2),~~ in a public postsecondary educational institution shall be eligible for reasonable substitution for any requirement for graduation, for admission into a program of study, or for entry into the upper division where documentation can be provided that the person's failure to meet the requirement is related to the disability and where failure to meet the graduation requirement or program admission requirement does not constitute a fundamental alteration in the nature of the program.

Section 69. Subsections (2) and (9) of section 1007.271, Florida Statutes, are amended to read:

1007.271 Dual enrollment programs.—

(2) For the purpose of this section, an eligible secondary student is a student who is enrolled in any of grades 6 through 12 in a Florida public ~~secondary~~ school or in a Florida private ~~secondary~~ school that ~~which~~ is in compliance with s. 1002.42(2)

and provides a secondary curriculum pursuant to ~~s. 1003.428 or~~ s. 1003.4282. Students who are eligible for dual enrollment pursuant to this section may enroll in dual enrollment courses conducted during school hours, after school hours, and during the summer term. However, if the student is projected to graduate from high school before the scheduled completion date of a postsecondary course, the student may not register for that course through dual enrollment. The student may apply to the postsecondary institution and pay the required registration, tuition, and fees if the student meets the postsecondary institution's admissions requirements under s. 1007.263. Instructional time for dual enrollment may vary from 900 hours; however, the full-time equivalent student membership value shall be subject to the provisions in s. 1011.61(4). A ~~Any~~ student enrolled as a dual enrollment student is exempt from the payment of registration, tuition, and laboratory fees. Applied academics for adult education instruction, developmental education, and other forms of precollegiate instruction, as well as physical education courses that focus on the physical execution of a skill rather than the intellectual attributes of the activity, are ineligible for inclusion in the dual enrollment program. Recreation and leisure studies courses shall be evaluated individually in the same manner as physical education courses for potential inclusion in the program.

(9) The Commissioner of Education shall appoint faculty committees representing public school, Florida College System institution, and university faculties to identify postsecondary courses that meet the high school graduation requirements of ~~s. 1003.428 or~~ s. 1003.4282 and to establish the number of

postsecondary semester credit hours of instruction and equivalent high school credits earned through dual enrollment pursuant to this section that are necessary to meet high school graduation requirements. Such equivalencies shall be determined solely on comparable course content and not on seat time traditionally allocated to such courses in high school. The Commissioner of Education shall recommend to the State Board of Education those postsecondary courses identified to meet high school graduation requirements, based on mastery of course outcomes, by their course numbers, and all high schools shall accept these postsecondary education courses toward meeting the requirements of ~~s. 1003.428 or~~ s. 1003.4282.

Section 70. Subsections (3), (7), and (8) of section 1008.22, Florida Statutes, are amended to read:

1008.22 Student assessment program for public schools.—

(3) STATEWIDE, STANDARDIZED ASSESSMENT PROGRAM.—The Commissioner of Education shall design and implement a statewide, standardized assessment program aligned to the core curricular content established in the Next Generation Sunshine State Standards. The commissioner also must develop or select and implement a common battery of assessment tools that will be used in all juvenile justice education programs in the state. These tools must accurately measure the core curricular content established in the Next Generation Sunshine State Standards. Participation in the assessment program is mandatory for all school districts and all students attending public schools, including adult students seeking a standard ~~an adult~~ high school diploma under s. 1003.4282 and students in Department of Juvenile Justice education programs, except as otherwise

provided by law ~~prescribed by the commissioner~~. If a student does not participate in the assessment program, the school district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation. The statewide, standardized assessment program shall be designed and implemented as follows:

(a) *Statewide, standardized comprehensive assessments* ~~*Florida Comprehensive Assessment Test (FCAT) until replaced by common core assessments*~~.—The statewide, standardized ~~FCAT~~ Reading assessment shall be administered annually in grades 3 through 10. The statewide, standardized Writing assessment shall be administered annually at least once at the elementary, middle, and high school levels. When the Reading and Writing assessments are replaced by English Language Arts (ELA) assessments, ELA assessments shall be administered to students in grades 3 through 11. Retake opportunities for the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment must be provided. Students taking the ELA assessments shall not take the statewide, standardized assessments in Reading or Writing. ELA assessments shall be administered online. The statewide, standardized~~; FCAT~~ Mathematics assessments shall be administered annually in grades 3 through 8. Students taking a revised Mathematics assessment shall not take the discontinued assessment. The statewide, standardized~~; FCAT Writing shall be administered annually at least once at the elementary, middle, and high school levels;~~ ~~and FCAT~~ Science assessment shall be administered annually at least once at the elementary and middle grades levels. In order to earn a standard high school diploma, a student who has not earned a passing

score on the grade 10 ~~FCAT~~ Reading assessment or, upon implementation, the grade 10 ELA assessment must earn a passing score on the assessment retake or earn a concordant score as authorized under subsection (7) ~~must participate in each retake of the assessment until the student earns a passing score. The commissioner shall recommend and the State Board of Education must adopt a score on both the SAT and ACT that is concordant to a passing score on grade 10 FCAT Reading that, if achieved by a student, meets the must-pass requirement for grade 10 FCAT Reading~~.

(b) *End-of-course (EOC) assessments.*—EOC assessments must be statewide, standardized, and developed or approved by the Department of Education as follows:

1. Statewide, standardized EOC assessments in mathematics shall be administered according to this subparagraph. Beginning with the 2010-2011 school year, all students enrolled in Algebra I must take the Algebra I EOC assessment. Except as otherwise provided in paragraph (c) ~~this section~~, beginning with students entering grade 9 in the 2011-2012 school year, a student who is enrolled in Algebra I must earn a passing score on the Algebra I EOC assessment or attain a comparative score as authorized under subsection (8) in order to earn a standard high school diploma. In order to earn a standard high school diploma, a student who has not earned a passing score on the Algebra I EOC assessment must earn a passing score on the assessment retake or a comparative score as authorized under subsection (8) ~~must participate in each retake of the assessment until the student earns a passing score~~. Beginning with the 2011-2012 school year, all students enrolled in Geometry must take the Geometry EOC

assessment. Middle grades students enrolled in Algebra I, ~~or~~ Geometry, or Biology I must take the statewide, standardized EOC assessment for those courses and shall ~~are~~ not ~~required to~~ take the corresponding subject and grade-level statewide, standardized assessment ~~FCAT~~. When a statewide, standardized EOC assessment in Algebra II is administered, all students enrolled in Algebra II must take the EOC assessment. Pursuant to the commissioner's implementation schedule, student performance on the Algebra II EOC assessment constitutes 30 percent of a student's final course grade.

2. Statewide, standardized EOC assessments in science shall be administered according to this subparagraph. Beginning with the 2011-2012 school year, all students enrolled in Biology I must take the Biology I EOC assessment. Beginning with students entering grade 9 in the 2013-2014 school year, performance on the Biology I EOC assessment constitutes 30 percent of the student's final course grade.

3. ~~During the 2012-2013 school year, an EOC assessment in civics education shall be administered as a field test at the middle grades level.~~ Beginning with the 2013-2014 school year, each student's performance on the statewide, standardized middle grades Civics EOC assessment ~~in civics education~~ constitutes 30 percent of the student's final course grade in civics education.

4. The commissioner may select one or more nationally developed comprehensive examinations, which may include examinations for a College Board Advanced Placement course, International Baccalaureate course, or Advanced International Certificate of Education course, or industry-approved examinations to earn national industry certifications identified

in the Industry Certification Funding List, for use as EOC assessments under this paragraph if the commissioner determines that the content knowledge and skills assessed by the examinations meet or exceed the grade-level expectations for the core curricular content established for the course in the Next Generation Sunshine State Standards. Use of any such examination as an EOC assessment must be approved by the state board in rule.

5. Contingent upon funding provided in the General Appropriations Act, including the appropriation of funds received through federal grants, the commissioner may establish an implementation schedule for the development and administration of additional statewide, standardized EOC assessments that must be approved by the state board, in rule. If approved by the state board, student performance on such assessments constitutes 30 percent of a student's final course grade.

6. All statewide, standardized EOC assessments must be administered online except as otherwise provided in paragraph (c).

(c) *Students with disabilities; Florida Alternate Assessment.*—

1. Each district school board must provide instruction to prepare students with disabilities in the core content knowledge and skills necessary for successful grade-to-grade progression and high school graduation.

2. A student with a disability, as defined in s. 1007.02 ~~1007.02(2)~~, for whom the individual education plan (IEP) team determines that the statewide, standardized assessments under

this section cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, shall have assessment results waived for the purpose of receiving a course grade and a standard high school diploma. Such waiver shall be designated on the student's transcript. The statement of waiver shall be limited to a statement that performance on an assessment was waived for the purpose of receiving a course grade or a standard high school diploma, as applicable.

3. The State Board of Education shall adopt rules, based upon recommendations of the commissioner, for the provision of assessment accommodations for students with disabilities and for students who have limited English proficiency.

a. Accommodations that negate the validity of a statewide, standardized assessment are not allowed during the administration of the assessment. However, instructional accommodations are allowed in the classroom if identified in a student's IEP. Students using instructional accommodations in the classroom that are not allowed on a statewide, standardized assessment may have assessment results waived if the IEP team determines that the assessment cannot accurately measure the student's abilities.

b. If a student is provided with instructional accommodations in the classroom that are not allowed as accommodations for statewide, standardized assessments, the district must inform the parent in writing and provide the parent with information regarding the impact on the student's ability to meet expected performance levels. A parent must provide signed consent for a student to receive classroom instructional accommodations that would not be available or

permitted on a statewide, standardized assessment and acknowledge in writing that he or she understands the implications of such instructional accommodations.

c. If a student's IEP states that online administration of a statewide, standardized assessment will significantly impair the student's ability to perform, the assessment shall be administered in hard copy.

4. For students with significant cognitive disabilities, the Department of Education shall provide for implementation of the Florida Alternate Assessment to accurately measure the core curricular content established in the Next Generation Sunshine State Standards.

(d) *Implementation schedule* ~~*Common core assessments in English Language Arts (ELA) and mathematics*~~.—

~~1. Contingent upon funding, common core assessments in ELA shall be administered to students in grades 3 through 11. Retake opportunities for the grade 10 assessment must be provided. Students taking the ELA assessments are not required to take the assessments in FCAT Reading or FCAT Writing. Common core ELA assessments shall be administered online.~~

~~2. Contingent upon funding, common core assessments in mathematics shall be administered to all students in grades 3 through 8, and common core assessments in Algebra I, Geometry, and Algebra II shall be administered to students enrolled in those courses. Retake opportunities must be provided for the Algebra I assessment. Students may take the common core mathematics assessments pursuant to the Credit Acceleration Program (CAP) under s. 1003.4295(3). Students taking common core assessments in mathematics are not required to take FCAT~~

~~Mathematics or statewide, standardized EOC assessments in mathematics. Common core mathematics assessments shall be administered online.~~

1.~~3.~~ The Commissioner ~~State Board~~ of Education shall establish and publish on the department's website ~~adopt rules establishing~~ an implementation schedule to transition from the statewide, standardized ~~FCAT~~ Reading and~~, FCAT~~ Writing assessments to the ELA assessments and to the revised~~, FCAT~~ Mathematics assessments, including the~~, and~~ Algebra I and Geometry EOC assessments ~~to common core assessments in English Language Arts and mathematics~~. The schedule must take into consideration funding, sufficient field and baseline data, access to assessments, instructional alignment, and school district readiness to administer the ~~common core~~ assessments online. ~~Until the 10th grade common core ELA and Algebra I assessments become must-pass assessments, students must pass 10th grade FCAT Reading and the Algebra I EOC assessment, or achieve a concordant or comparative score as authorized under this section, in order to earn a standard high school diploma under s. 1003.4282. Students taking 10th grade FCAT Reading or the Algebra I EOC assessment are not required to take the respective common core assessments.~~

2.~~4.~~ The Department of Education shall publish minimum and recommended technology requirements that include specifications for hardware, software, networking, security, and broadband capacity to facilitate school district compliance with the requirement that ~~common core~~ assessments be administered online.

(e) *Assessment scores and achievement levels.*—

1. All statewide, standardized EOC assessments and ~~FCAT~~

Reading, ~~FCAT~~ Writing, and ~~FCAT~~ Science assessments shall use scaled scores and achievement levels. Achievement levels shall range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment. For purposes of the statewide, standardized ~~FCAT~~ Writing assessment, student achievement shall be scored using a scale of 1 through 6.

2. The state board shall designate by rule a passing score for each statewide, standardized ~~EOC and FCAT~~ assessment. ~~In addition, the state board shall designate a score for each statewide, standardized EOC assessment that indicates that a student is high achieving and has the potential to meet college-readiness standards by the time the student graduates from high school.~~

3. If the commissioner seeks to revise a statewide, standardized assessment and the revisions require the state board to modify performance level scores, including the passing score, the commissioner shall provide a copy of the proposed scores and implementation plan to the President of the Senate and the Speaker of the House of Representatives at least 90 days before submission to the state board for review. Until the state board adopts the modifications by rule, the commissioner shall use calculations for scoring the assessment that adjust student scores on the revised assessment for statistical equivalence to student scores on the former assessment. The state board shall adopt by rule the passing score for the revised assessment that is statistically equivalent to the passing score on the discontinued assessment for a student who is required to attain

a passing score on the discontinued assessment. The commissioner may, with approval of the state board, discontinue administration of the former assessment upon the graduation, based on normal student progression, of students participating in the final regular administration of the former assessment. If the commissioner revises a statewide, standardized assessment and the revisions require the state board to modify the passing score, only students taking the assessment for the first time after the rule is adopted are affected.

(f) *Assessment schedules and reporting of results.*—The Commissioner of Education shall establish schedules for the administration of assessments and the reporting of student assessment results. The commissioner shall consider the observance of religious and school holidays when developing the schedule. By August 1 of each year, the commissioner shall notify each school district in writing and publish on the department's website the assessment and reporting schedules for, at a minimum, the school year following the upcoming school year. The assessment and reporting schedules must provide the earliest possible reporting of student assessment results to the school districts. Assessment results for the statewide, standardized ~~FCAT~~ Reading assessments, or upon implementation the ELA assessments, and ~~FCAT~~ Mathematics assessments, including the EOC assessments in Algebra I and Geometry, must be made available no later than the week of June 8. The administration of the statewide, standardized ~~FCAT~~ Writing assessment and the Florida Alternate Assessment may be no earlier than the week of March 1. School districts shall administer assessments in accordance with the schedule established by the commissioner.

(g) *Prohibited activities.*—A district school board shall prohibit each public school from suspending a regular program of curricula for purposes of administering practice assessments or engaging in other assessment-preparation activities for a statewide, standardized assessment. However, a district school board may authorize a public school to engage in the following assessment-preparation activities:

1. Distributing to students sample assessment books and answer keys published by the Department of Education.

2. Providing individualized instruction in assessment-taking strategies, without suspending the school's regular program of curricula, for a student who scores Level 1 or Level 2 on a prior administration of an assessment.

3. Providing individualized instruction in the content knowledge and skills assessed, without suspending the school's regular program of curricula, for a student who scores Level 1 or Level 2 on a prior administration of an assessment or a student who, through a diagnostic assessment administered by the school district, is identified as having a deficiency in the content knowledge and skills assessed.

4. Administering a practice assessment or engaging in other assessment-preparation activities that are determined necessary to familiarize students with the organization of the assessment, the format of assessment items, and the assessment directions or that are otherwise necessary for the valid and reliable administration of the assessment, as set forth in rules adopted by the State Board of Education with specific reference to this paragraph.

(h) *Contracts for assessments.*—The commissioner shall

provide for the assessments to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational institutions, or school districts. The commissioner may enter into contracts for the continued administration of the assessments authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next fiscal year and may be paid from the appropriations of either or both fiscal years. The commissioner may negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law.

(7) CONCORDANT SCORES ~~FOR 10TH GRADE FCAT READING. Until the state transitions to common core English Language Arts assessments,~~ The Commissioner of Education must identify scores on the SAT and ACT that if achieved satisfy the graduation requirement that a student pass the grade 10 statewide, standardized ~~10th grade FCAT~~ Reading assessment or, upon implementation, the grade 10 ELA assessment. The commissioner may identify concordant scores on ~~other~~ assessments other than the SAT and ACT ~~as well~~. If the content or scoring procedures change for the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment ~~10th grade FCAT Reading~~, new concordant scores must be determined. If new concordant scores are not timely adopted, the last-adopted concordant scores remain in effect until such time as new scores are adopted. The state board shall adopt concordant scores in rule.

(8) COMPARATIVE SCORES FOR END-OF-COURSE (EOC) ASSESSMENT ~~ASSESSMENTS~~.—The Commissioner of Education must identify one or

more comparative scores for the Algebra I EOC assessment ~~and may identify comparative scores for the other EOC assessments~~. If the content or scoring procedures change for the EOC assessment ~~assessments~~, new comparative scores must be determined. If new comparative scores are not timely adopted, the last-adopted comparative scores remain in effect until such time as new scores are adopted. The state board shall adopt comparative scores in rule.

Section 71. Paragraph (h) of subsection (2), paragraph (a) of subsection (4), paragraph (b) of subsection (6), and paragraph (b) of subsection (7) of section 1008.25, Florida Statutes, are amended to read:

1008.25 Public school student progression; remedial instruction; reporting requirements.—

(2) COMPREHENSIVE STUDENT PROGRESSION PLAN.—Each district school board shall establish a comprehensive plan for student progression which must:

(h) Provide instructional sequences by which students in kindergarten through high school may attain progressively higher levels of skill in the use of digital tools and applications. The instructional sequences must include participation in curricular and instructional options and the demonstration of competence of standards required pursuant to ss. 1003.41 and 1003.4203 through attainment of industry certifications and other means of demonstrating credit requirements identified under ss. 1002.3105, 1003.4203, ~~1003.428,~~ and 1003.4282.

(4) ASSESSMENT AND REMEDIATION.—

(a) Each student must participate in the statewide, standardized assessment program required by s. 1008.22. Each

student who does not meet specific levels of performance on the required assessments as determined by the district school board or who scores below Level 3 on the statewide, standardized Reading assessment or, upon implementation, the English Language Arts assessment or on the statewide, standardized Mathematics assessments in grades 3 through 8 and the Algebra I EOC assessment ~~FCAT Reading or FCAT Mathematics or on the common core English Language Arts or mathematics assessments as applicable under s. 1008.22~~ must be provided with additional diagnostic assessments to determine the nature of the student's difficulty, the areas of academic need, and strategies for appropriate intervention and instruction as described in paragraph (b).

(6) ELIMINATION OF SOCIAL PROMOTION.—

(b) The district school board may only exempt students from mandatory retention, as provided in paragraph (5)(b), for good cause. Good cause exemptions shall be limited to the following:

1. Limited English proficient students who have had less than 2 years of instruction in an English for Speakers of Other Languages program.

2. Students with disabilities whose individual education plan indicates that participation in the statewide assessment program is not appropriate, consistent with the requirements of s. 1008.212 ~~State Board of Education rule~~.

3. Students who demonstrate an acceptable level of performance on an alternative standardized reading or English Language Arts assessment approved by the State Board of Education.

4. A student who demonstrates through a student portfolio

that he or she is performing at least at Level 2 on the statewide, standardized ~~FCAT~~ Reading assessment or, upon implementation, the ~~common core~~ English Language Arts assessment~~, as applicable under s. 1008.22~~.

5. Students with disabilities who take the statewide, standardized ~~participate in FCAT~~ Reading assessment or, upon implementation, the ~~common core~~ English Language Arts assessment~~, as applicable under s. 1008.22,~~ and who have an individual education plan or a Section 504 plan that reflects that the student has received intensive remediation in reading or ~~and~~ English Language Arts for more than 2 years but still demonstrates a deficiency and was previously retained in kindergarten, grade 1, grade 2, or grade 3.

6. Students who have received intensive remediation in reading or ~~and~~ English Language Arts~~, as applicable under s. 1008.22,~~ for 2 or more years but still demonstrate a deficiency and who were previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of 2 years. Intensive instruction for students so promoted must include an altered instructional day that includes specialized diagnostic information and specific reading strategies for each student. The district school board shall assist schools and teachers to implement reading strategies that research has shown to be successful in improving reading among low-performing readers.

(7) SUCCESSFUL PROGRESSION FOR RETAINED THIRD GRADE STUDENTS.—

(b) Each school district shall:

1. Provide third grade students who are retained under the provisions of paragraph (5)(b) with intensive instructional

services and supports to remediate the identified areas of reading deficiency, including participation in the school district's summer reading camp as required under paragraph (a) and a minimum of 90 minutes of daily, uninterrupted, scientifically research-based reading instruction which includes phonemic awareness, phonics, fluency, vocabulary, and comprehension and other strategies prescribed by the school district, which may include, but are not limited to:

a. Integration of science and social studies content within the 90-minute block.

b. Small group instruction.

c. Reduced teacher-student ratios.

d. More frequent progress monitoring.

e. Tutoring or mentoring.

f. Transition classes containing 3rd and 4th grade students.

g. Extended school day, week, or year.

2. Provide written notification to the parent of a ~~any~~ student who is retained under the provisions of paragraph (5)(b) that his or her child has not met the proficiency level required for promotion and the reasons the child is not eligible for a good cause exemption as provided in paragraph (6)(b). The notification must comply with the provisions of s. 1002.20(15) and must include a description of proposed interventions and supports that will be provided to the child to remediate the identified areas of reading deficiency.

3. Implement a policy for the midyear promotion of a ~~any~~ student retained under the provisions of paragraph (5)(b) who can demonstrate that he or she is a successful and independent

reader and performing at or above grade level in reading or, upon implementation of ~~and~~ English Language Arts assessments, performing at or above grade level in English Language Arts~~, as applicable under s. 1008.22~~. Tools that school districts may use in reevaluating a ~~any~~ student retained may include subsequent assessments, alternative assessments, and portfolio reviews, in accordance with rules of the State Board of Education.

4. Provide students who are retained under the provisions of paragraph (5)(b) with a highly effective teacher as determined by the teacher's performance evaluation under s. 1012.34.

5. Establish at each school, when applicable, an Intensive Acceleration Class for retained grade 3 students who subsequently score Level 1 on the required statewide, standardized assessment identified in s. 1008.22. The focus of the Intensive Acceleration Class shall be to increase a child's reading and English Language Arts skill level at least two grade levels in 1 school year. The Intensive Acceleration Class shall:

a. Be provided to a ~~any~~ student in grade 3 who scores Level 1 on the statewide, standardized ~~FCAT~~ Reading assessment or, upon implementation, the ~~common core~~ English Language Arts assessment~~, as applicable under s. 1008.22,~~ and who was retained in grade 3 the prior year because of scoring Level 1.

b. Have a reduced teacher-student ratio.

c. Provide uninterrupted reading instruction for the majority of student contact time each day and incorporate opportunities to master the grade 4 Next Generation Sunshine State Standards in other core subject areas.

d. Use a reading program that is scientifically research-

based and has proven results in accelerating student reading achievement within the same school year.

e. Provide intensive language and vocabulary instruction using a scientifically research-based program, including use of a speech-language therapist.

Section 72. Paragraphs (b) and (c) of subsection (4) and subsections (5) and (7) of section 1008.33, Florida Statutes, are amended to read:

1008.33 Authority to enforce public school improvement.—

(4)

(b) ~~Except as provided in subsection (5),~~ The turnaround options available to a school district to address a school that earns a grade of "F" are:

1. Convert the school to a district-managed turnaround school;

2. Reassign students to another school and monitor the progress of each reassigned student;

3. Close the school and reopen the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness;

4. Contract with an outside entity that has a demonstrated record of effectiveness to operate the school; or

5. Implement a hybrid of turnaround options set forth in subparagraphs 1.-4. or other turnaround models that have a demonstrated record of effectiveness.

(c) ~~Except for schools required to implement a turnaround option pursuant to subsection (5),~~ A school earning a grade of "F" shall have a planning year followed by 2 full school years to implement the initial turnaround option selected by the

school district and approved by the state board. Implementation of the turnaround option is no longer required if the school improves by at least one letter grade.

~~(5) A school that earns a grade of "F" within 2 years after raising its grade from a grade of "F" or that earns a grade of "F" within 2 years after exiting the lowest-performing category under s. 3, chapter 2009-144, Laws of Florida, must implement one of the turnaround options in subparagraphs (4)(b)2.-5.~~

~~(7) A school classified in the lowest-performing category under s. 3, chapter 2009-144, Laws of Florida, before July 1, 2012, is not required to continue implementing any turnaround option unless the school earns a grade of "F" or a third consecutive "D" for the 2011-2012 school year. A school earning a grade of "F" or a third consecutive "D" for the 2011-2012 school year may not restart the number of years it has been low performing by virtue of the 2012 amendments to this section.~~

Section 73. Section 1008.331, Florida Statutes, is repealed.

Section 74. Subsection (2) of section 1008.3415, Florida Statutes, is amended to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(2) Notwithstanding s. 1008.34(3)(c)3., the achievement scores and learning gains of a student with a disability who attends an exceptional student education center and has not been enrolled in or attended a public school other than an exceptional student education center for grades K-12 within the school district shall not be included in the calculation of the home school's grade if the student is identified as an emergent

student on the alternate assessment ~~tool~~ described in s. 1008.22(3)(c) ~~1008.22(3)(c)13~~.

Section 75. Section 1008.35, Florida Statutes, is repealed.

Section 76. Subsection (3) of section 1009.22, Florida Statutes, is amended to read:

1009.22 Workforce education postsecondary student fees.—

(3)(a) Except as otherwise provided by law, fees for students who are nonresidents for tuition purposes must offset the full cost of instruction. Residency of students shall be determined as required in s. 1009.21. Fee-nonexempt students enrolled in applied academics for adult education instruction shall be charged fees equal to the fees charged for adult general education programs. Each Florida College System institution that conducts developmental education and applied academics for adult education instruction in the same class section may charge a single fee for both types of instruction.

(b) Fees for continuing workforce education shall be locally determined by the district school board or Florida College System institution board of trustees. Expenditures for the continuing workforce education program provided by the Florida College System institution or school district must be fully supported by fees. Enrollments in continuing workforce education courses may not be counted for purposes of funding full-time equivalent enrollment.

(c) ~~Effective July 1, 2011,~~ For programs leading to a career certificate or an applied technology diploma, the standard tuition shall be $2.22 per contact hour for residents and nonresidents and the out-of-state fee shall be $6.66 per contact hour. For adult general education programs, a block

tuition of $45 per half year or $30 per term shall be assessed for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

(d) ~~Beginning with the 2008-2009 fiscal year and each year thereafter,~~ The tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and out-of-state fee shall remain at the same level as the prior fiscal year.

(e) Each district school board and each Florida College System institution board of trustees may adopt tuition and out-

of-state fees that ~~may~~ vary no more than 5 percent below or ~~and~~ 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

~~(f) The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.~~

(f)~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 77. Paragraph (a) of subsection (1) of section 1009.40, Florida Statutes, is amended to read:

1009.40 General requirements for student eligibility for state financial aid awards and tuition assistance grants.—

(1)(a) The general requirements for eligibility of students for state financial aid awards and tuition assistance grants consist of the following:

1. Achievement of the academic requirements of and acceptance at a state university or Florida College System institution; a nursing diploma school approved by the Florida Board of Nursing; a Florida college or university which is accredited by an accrediting agency recognized by the State Board of Education; a ~~any~~ Florida institution the credits of which are acceptable for transfer to state universities; a ~~any~~ career center; or a ~~any~~ private career institution accredited by an accrediting agency recognized by the State Board of Education.

2. Residency in this state for no less than 1 year

preceding the award of aid or a tuition assistance grant for a program established pursuant to s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, ~~s. 1009.56,~~ s. 1009.60, s. 1009.62, s. 1009.72, s. 1009.73, s. 1009.77, s. 1009.89, or s. 1009.891. Residency in this state must be for purposes other than to obtain an education. Resident status for purposes of receiving state financial aid awards shall be determined in the same manner as resident status for tuition purposes pursuant to s. 1009.21.

3. Submission of certification attesting to the accuracy, completeness, and correctness of information provided to demonstrate a student's eligibility to receive state financial aid awards or tuition assistance grants. Falsification of such information shall result in the denial of a ~~any~~ pending application and revocation of an ~~any~~ award or grant currently held to the extent that no further payments shall be made. Additionally, students who knowingly make false statements in order to receive state financial aid awards or tuition assistance grants commit a misdemeanor of the second degree subject to the provisions of s. 837.06 and shall be required to return all state financial aid awards or tuition assistance grants wrongfully obtained.

Section 78. Subsection (1) of section 1009.531, Florida Statutes, is amended to read:

1009.531 Florida Bright Futures Scholarship Program; student eligibility requirements for initial awards.—

(1) ~~Effective January 1, 2008,~~ In order to be eligible for an initial award from any of the three types of scholarships under the Florida Bright Futures Scholarship Program, a student

must:

(a) Be a Florida resident as defined in s. 1009.40 and rules of the State Board of Education.

(b) Earn a standard Florida high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282 or a high school equivalency diploma ~~its equivalent~~ pursuant to ~~s. 1003.428, s. 1003.4281, s. 1003.4282, or~~ s. 1003.435 unless:

1. The student completes a home education program according to s. 1002.41; or

2. The student earns a high school diploma from a non-Florida school while living with a parent or guardian who is on military or public service assignment away from Florida.

(c) Be accepted by and enroll in an eligible Florida public or independent postsecondary education institution.

(d) Be enrolled for at least 6 semester credit hours or the equivalent in quarter hours or clock hours.

(e) Not have been found guilty of, or entered a plea of nolo contendere to, a felony charge, unless the student has been granted clemency by the Governor and Cabinet sitting as the Executive Office of Clemency.

(f) Apply for a scholarship from the program by high school graduation. However, a student who graduates from high school midyear must apply no later than August 31 of the student's graduation year in order to be evaluated for and, if eligible, receive an award for the current academic year.

Section 79. Paragraph (c) of subsection (3) of section 1009.532, Florida Statutes, is amended to read:

1009.532 Florida Bright Futures Scholarship Program; student eligibility requirements for renewal awards.—

(3)

(c) A student who is initially eligible in the 2012-2013 academic year and thereafter may receive an award for a maximum of 100 percent of the number of credit hours required to complete an associate degree program, a baccalaureate degree program, or a postsecondary career certificate program or, for a Florida Gold Seal Vocational Scholars award, may receive an award for a maximum of 100 percent of the number of credit hours or equivalent clock hours required to complete one of the following at a Florida public or nonpublic education institution that offers these specific programs: for an applied technology diploma program as defined in s. 1004.02(7) ~~1004.02(8)~~, up to 60 credit hours or equivalent clock hours; for a technical degree education program as defined in s. 1004.02(13) ~~1004.02(14)~~, up to the number of hours required for a specific degree not to exceed 72 credit hours or equivalent clock hours; or for a career certificate program as defined in s. 1004.02(20) ~~1004.02(21)~~, up to the number of hours required for a specific certificate not to exceed 72 credit hours or equivalent clock hours. A student who transfers from one of these program levels to another program level becomes eligible for the higher of the two credit hour limits.

Section 80. Paragraph (c) of subsection (4) of section 1009.536, Florida Statutes, is amended to read:

1009.536 Florida Gold Seal Vocational Scholars award.—The Florida Gold Seal Vocational Scholars award is created within the Florida Bright Futures Scholarship Program to recognize and reward academic achievement and career preparation by high school students who wish to continue their education.

(4)

(c) A student who is initially eligible in the 2012-2013 academic year and thereafter may earn a Florida Gold Seal Vocational Scholarship for a maximum of 100 percent of the number of credit hours or equivalent clock hours required to complete one of the following at a Florida public or nonpublic education institution that offers these specific programs: for an applied technology diploma program as defined in s. 1004.02(7) ~~1004.02(8)~~, up to 60 credit hours or equivalent clock hours; for a technical degree education program as defined in s. 1004.02(13) ~~1004.02(14)~~, up to the number of hours required for a specific degree not to exceed 72 credit hours or equivalent clock hours; or for a career certificate program as defined in s. 1004.02(20) ~~1004.02(21)~~, up to the number of hours required for a specific certificate not to exceed 72 credit hours or equivalent clock hours.

Section 81. Section 1009.56, Florida Statutes, is repealed.

Section 82. Section 1009.69, Florida Statutes, is repealed.

Section 83. Subsection (1) of section 1009.91, Florida Statutes, is amended to read:

1009.91 Assistance programs and activities of the department.—

(1) The department may contract for the administration of the student financial assistance programs as specifically provided in ss. 295.01, 1009.29, ~~1009.56,~~ and 1009.78.

Section 84. Paragraph (c) of subsection (2) of section 1009.94, Florida Statutes, is amended to read:

1009.94 Student financial assistance database.—

(2) For purposes of this section, financial assistance

includes:

(c) Any financial assistance provided under s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, s. 1009.55, ~~s. 1009.56,~~ s. 1009.60, s. 1009.62, s. 1009.70, s. 1009.701, s. 1009.72, s. 1009.73, s. 1009.74, s. 1009.77, s. 1009.89, or s. 1009.891.

Section 85. Part V of chapter 1009, Florida Statutes, consisting of sections 1009.99, 1009.991, 1009.992, 1009.993, 1009.994, 1009.995, 1009.996, 1009.9965, 1009.997, 1009.9975, 1009.9976, 1009.9977, 1009.9978, 1009.9979, 1009.998, 1009.9981, 1009.9982, 1009.9983, 1009.9984, 1009.9985, 1009.9986, 1009.9987, 1009.9988, 1009.9989, 1009.9990, 1009.9991, 1009.9992, 1009.9993, and 1009.9994, is repealed.

Section 86. Paragraph (b) of subsection (13) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(13) TOTAL ALLOCATION OF STATE FUNDS TO EACH DISTRICT FOR CURRENT OPERATION.—The total annual state allocation to each district for current operation for the FEFP shall be distributed periodically in the manner prescribed in the General Appropriations Act.

(b) The amount thus obtained shall be the net annual allocation to each school district. However, if it is determined that any school district received an underallocation or

overallocation for any prior year because of an arithmetical error, assessment roll change required by final judicial decision, full-time equivalent student membership error, or any allocation error revealed in an audit report, the allocation to that district shall be appropriately adjusted. ~~Beginning with audits for the 2001-2002 fiscal year, if the adjustment is the result of an audit finding in which group 2 FTE are reclassified to the basic program and the district weighted FTE are over the weighted enrollment ceiling for group 2 programs, the adjustment shall not result in a gain of state funds to the district.~~ Beginning with the 2011-2012 fiscal year, if a special program cost factor is less than the basic program cost factor, an audit adjustment may not result in the reclassification of the special program FTE to the basic program FTE. If the Department of Education audit adjustment recommendation is based upon controverted findings of fact, the Commissioner of Education is authorized to establish the amount of the adjustment based on the best interests of the state.

Section 87. Paragraphs (b) and (c) of subsection (3) of section 1011.71, Florida Statutes, are repealed.

Section 88. Subsection (4) of section 1011.76, Florida Statutes, is repealed.

Section 89. Paragraph (b) of subsection (1) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(1) As used in this section, the terms "workforce education" and "workforce education program" include:

(b) Career certificate programs, as defined in s.

1004.02(20) ~~1004.02(21)~~.

Section 90. Paragraphs (b), (f), (j), (m), and (p) of subsection (2) and subsection (6) of section 1012.05, Florida Statutes, are amended to read:

1012.05 Teacher recruitment and retention.—

(2) The Department of Education shall:

(b) Advertise in major newspapers, national professional publications, and other professional publications and in public and nonpublic postsecondary educational institutions, if needed.

(f) Develop and distribute promotional materials related to teaching as a career, if needed.

~~(j) Develop, in consultation with school district staff including, but not limited to, district school superintendents, district school board members, and district human resources personnel, a long-range plan for educator recruitment and retention.~~

~~(m) Develop and implement a First Response Center to provide educator candidates one-stop shopping for information on teaching careers in Florida and establish the Teacher Lifeline Network to provide online support to beginning teachers and those needing assistance.~~

(n) ~~(p)~~ Notify each teacher, via e-mail, of each item in the General Appropriations Act and legislation that affects teachers, including, but not limited to, ~~the Excellent Teaching Program,~~ the Florida Teachers Classroom Supply Assistance Program, ~~liability insurance protection for teachers,~~ death benefits for teachers, substantive legislation, rules of the State Board of Education, and issues concerning student achievement.

~~(6) The Commissioner of Education shall take steps that provide flexibility and consistency in meeting the highly qualified teacher criteria as defined in the No Child Left Behind Act of 2001 through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).~~

Section 91. Paragraph (b) of subsection (1) of section 1012.22, Florida Statutes, is amended to read:

1012.22 Public school personnel; powers and duties of the district school board.—The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

(b) *Time to act on nominations.*—The district school board shall act no ~~not~~ later than 3 weeks following the receipt of statewide, standardized assessment scores and data under s. 1008.22 and~~, including~~ school grades, or June 30, whichever is later, on the district school superintendent's nominations of supervisors, principals, and members of the instructional staff.

Section 92. Subsection (9) of section 1012.33, Florida Statutes, is repealed.

Section 93. Paragraph (b) of subsection (1), paragraph (a) of subsection (3), and subsection (6) of section 1012.34, Florida Statutes, are amended to read:

1012.34 Personnel evaluation procedures and criteria.—

(1) EVALUATION SYSTEM APPROVAL AND REPORTING.—

(b) The department must approve each school district's instructional personnel and school administrator evaluation

systems. The department shall monitor each district's implementation of its instructional personnel and school administrator evaluation systems for compliance with the requirements of this section and s. 1012.3401.

(3) EVALUATION PROCEDURES AND CRITERIA.—Instructional personnel and school administrator performance evaluations must be based upon the performance of students assigned to their classrooms or schools, as provided in this section. Pursuant to this section, a school district's performance evaluation is not limited to basing unsatisfactory performance of instructional personnel and school administrators solely upon student performance, but may include other criteria approved to evaluate instructional personnel and school administrators' performance, or any combination of student performance and other approved criteria. Evaluation procedures and criteria must comply with, but are not limited to, the following:

(a) A performance evaluation must be conducted for each employee at least once a year, except that a classroom teacher, as defined in s. 1012.01(2)(a), excluding substitute teachers, who is newly hired by the district school board must be observed and evaluated at least twice in the first year of teaching in the school district. The performance evaluation must be based upon sound educational principles and contemporary research in effective educational practices. The evaluation criteria must include:

1. Performance of students.—At least 50 percent of a performance evaluation must be based upon data and indicators of student learning growth assessed annually by statewide assessments or, for subjects and grade levels not measured by

statewide assessments, by school district assessments as provided in s. 1008.22(6) ~~1008.22(8)~~. Each school district must use the formula adopted pursuant to paragraph (7)(a) for measuring student learning growth in all courses associated with statewide assessments and must select an equally appropriate formula for measuring student learning growth for all other grades and subjects, except as otherwise provided in subsection (7).

a. For classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, the student learning growth portion of the evaluation must include growth data for students assigned to the teacher over the course of at least 3 years. If less than 3 years of data are available, the years for which data are available must be used and the percentage of the evaluation based upon student learning growth may be reduced to not less than 40 percent.

b. For instructional personnel who are not classroom teachers, the student learning growth portion of the evaluation must include growth data on statewide assessments for students assigned to the instructional personnel over the course of at least 3 years, or may include a combination of student learning growth data and other measurable student outcomes that are specific to the assigned position, provided that the student learning growth data accounts for not less than 30 percent of the evaluation. If less than 3 years of student growth data are available, the years for which data are available must be used and the percentage of the evaluation based upon student learning growth may be reduced to not less than 20 percent.

c. For school administrators, the student learning growth

portion of the evaluation must include growth data for students assigned to the school over the course of at least 3 years. If less than 3 years of data are available, the years for which data are available must be used and the percentage of the evaluation based upon student learning growth may be reduced to not less than 40 percent.

2. Instructional practice.—Evaluation criteria used when annually observing classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, must include indicators based upon each of the Florida Educator Accomplished Practices adopted by the State Board of Education. For instructional personnel who are not classroom teachers, evaluation criteria must be based upon indicators of the Florida Educator Accomplished Practices and may include specific job expectations related to student support.

3. Instructional leadership.—For school administrators, evaluation criteria must include indicators based upon each of the leadership standards adopted by the State Board of Education under s. 1012.986, including performance measures related to the effectiveness of classroom teachers in the school, the administrator's appropriate use of evaluation criteria and procedures, recruitment and retention of effective and highly effective classroom teachers, improvement in the percentage of instructional personnel evaluated at the highly effective or effective level, and other leadership practices that result in student learning growth. The system may include a means to give parents and instructional personnel an opportunity to provide input into the administrator's performance evaluation.

4. Professional and job responsibilities.—For instructional

personnel and school administrators, other professional and job responsibilities must be included as adopted by the State Board of Education. The district school board may identify additional professional and job responsibilities.

(6) ANNUAL REVIEW OF AND REVISIONS TO THE SCHOOL DISTRICT EVALUATION SYSTEMS.—The district school board shall establish a procedure for annually reviewing instructional personnel and school administrator evaluation systems to determine compliance with this section and s. 1012.3401. All substantial revisions to an approved system must be reviewed and approved by the district school board before being used to evaluate instructional personnel or school administrators. Upon request by a school district, the department shall provide assistance in developing, improving, or reviewing an evaluation system.

Section 94. Section 1012.44, Florida Statutes, is amended to read:

1012.44 Qualifications for certain persons providing speech-language services.—The State Board of Education shall adopt rules for speech-language services to school districts that qualify for the sparsity supplement as described in s. 1011.62(7). These services may be provided by baccalaureate degree level persons for a period of 3 years. The rules shall authorize the delivery of speech-language services by baccalaureate degree level persons under the direction of a certified speech-language pathologist with a master's degree or higher. ~~By October 1, 2003, these rules shall be reviewed by the State Board of Education.~~

Section 95. Section 1012.561, Florida Statutes, is amended to read:

1012.561 Address of record.—Each certified educator or applicant for certification is solely responsible for maintaining his or her current address with the Department of Education and for notifying the department in writing of a change of address. ~~By January 1, 2005, each educator and applicant for certification must have on file with the department a current mailing address. Thereafter,~~ A certified educator or applicant for certification who is employed by a district school board shall notify his or her employing school district within 10 days after a change of address. At a minimum, the employing district school board shall notify the department monthly of the addresses of the certified educators or applicants for certification in the manner prescribed by the department. A certified educator or applicant for certification who is not employed by a district school board shall personally notify the department in writing within 30 days after a change of address. The department shall permit electronic notification; however, it is the responsibility of the certified educator or applicant for certification to ensure that the department has received the electronic notification.

Section 96. Section 1012.595, Florida Statutes, is repealed.

Section 97. Subsections (2), (3), and (4) of section 1012.885, Florida Statutes, are amended to read:

1012.885 Remuneration of Florida College System institution presidents; limitations.—

~~(2) LIMITATION ON COMPENSATION. Notwithstanding any other law, resolution, or rule to the contrary, a Florida College System institution president may not receive more than $225,000~~

~~in remuneration annually from appropriated state funds. Only compensation, as defined in s. 121.021(22), provided to a Florida College System institution president may be used in calculating benefits under chapter 121.~~

(2)~~(3)~~ EXCEPTIONS.—This section does not prohibit a ~~any~~ party from providing cash or cash-equivalent compensation from funds that are not appropriated state funds to a Florida College System institution president in excess of the limit in subsection (3) ~~(2)~~. If a party is unable or unwilling to fulfill an obligation to provide cash or cash-equivalent compensation to a Florida College System institution president as permitted under this subsection, appropriated state funds may not be used to fulfill such obligation.

(3)~~(4)~~ LIMITATION ON REMUNERATION.—Notwithstanding a law, resolution, or rule to the contrary ~~the provisions of this section~~, a Florida College System institution president may not receive more than $200,000 in remuneration from appropriated state funds. Only compensation, as defined in s. 121.021(22), provided to a Florida College System institution president may be used in calculating benefits under chapter 121.

Section 98. Subsections (2), (3), and (4) of section 1012.975, Florida Statutes, are amended to read:

1012.975 Remuneration of state university presidents; limitations.—

~~(2) LIMITATION ON COMPENSATION.—Notwithstanding any other law, resolution, or rule to the contrary, a state university president may not receive more than $225,000 in remuneration annually from public funds. Only compensation, as such term is defined in s. 121.021(22), provided to a state university~~

~~president may be used in calculating benefits under chapter 121.~~

(2)~~(3)~~ EXCEPTIONS.—This section does not prohibit a ~~any~~ party from providing cash or cash-equivalent compensation from funds that are not public funds to a state university president in excess of the limit in subsection (3) ~~(2)~~. If a party is unable or unwilling to fulfill an obligation to provide cash or cash-equivalent compensation to a state university president as permitted under this subsection, public funds may not be used to fulfill such obligation.

(3)~~(4)~~ LIMITATION ON REMUNERATION.—Notwithstanding a law, resolution, or rule to the contrary ~~the provisions of this section~~, a state university president may not receive more than $200,000 in remuneration from public funds. Only compensation, as defined in s. 121.021(22), provided to a state university president may be used in calculating benefits under chapter 121.

Section 99. Subsection (12) of section 1012.98, Florida Statutes, is amended to read:

1012.98 School Community Professional Development Act.—

(12) The department shall require teachers in grades K-12 ~~1-12~~ to participate in continuing education training provided by the Department of Children and Family Services on identifying and reporting child abuse and neglect.

Section 100. Paragraph (f) of subsection (2) of section 1013.35, Florida Statutes, is amended to read:

1013.35 School district educational facilities plan; definitions; preparation, adoption, and amendment; long-term work programs.—

(2) PREPARATION OF TENTATIVE DISTRICT EDUCATIONAL FACILITIES PLAN.—

(f) Not less than once every 5 years, the district school board shall have an ~~a financial management and performance~~ audit conducted of the district's educational planning and construction activities ~~of the district~~. An operational audit conducted by ~~the Office of Program Policy Analysis and Government Accountability and~~ the Auditor General pursuant to s. 11.45 ~~1008.35~~ satisfies this requirement.

Section 101. Section 1013.47, Florida Statutes, is amended to read:

1013.47 Substance of contract; contractors to give bond; penalties.—Each board shall develop contracts consistent with this chapter and statutes governing public facilities. Such a contract must contain the drawings and specifications of the work to be done and the material to be furnished, the time limit in which the construction is to be completed, the time and method by which payments are to be made upon the contract, and the penalty to be paid by the contractor for a ~~any~~ failure to comply with the terms of the contract. The board may require the contractor to pay a penalty for any failure to comply with the terms of the contract and may provide an incentive for early completion. Upon accepting a satisfactory bid, the board shall enter into a contract with the party or parties whose bid has been accepted. The contractor shall furnish the board with a performance and payment bond as set forth in s. 255.05. A board or other public entity may not require a contractor to secure a surety bond under s. 255.05 from a specific agent or bonding company. ~~Notwithstanding any other provision of this section, if 25 percent or more of the costs of any construction project is paid out of a trust fund established pursuant to 31 U.S.C. s. 1243(a)(1), laborers and mechanics employed by contractors or subcontractors on such construction will be paid wages not less than those prevailing on similar construction projects in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.~~ A person, firm, or corporation that constructs any part of any educational plant, or addition thereto, on the basis of any unapproved plans or in violation of any plans approved in accordance with the provisions of this chapter and rules of the State Board of Education or regulations of the Board of Governors relating to building standards or specifications is subject to forfeiture of the surety bond and unpaid compensation in an amount sufficient to reimburse the board for any costs that will need to be incurred in making any changes necessary to assure that all requirements are met and is also guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for each separate violation.

Section 102. Section 1013.49, Florida Statutes, is repealed.

Section 103. Section 1013.512, Florida Statutes, is repealed.

Section 104. Section 20 of chapter 2010-24, Laws of Florida, is repealed.

Section 105. 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)

April 9 2014
Meeting Date

Topic School Board Expansion Process

Bill Number SB 1226

Name Robert ~~Cerra~~ Cerra

Amendment Barcode 913102 *(if applicable)*

Job Title Governmental Consultant

Address 206 South Monroe Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 222-4428

E-mail bobCerra@Comcast.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Lee County School Board

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)

4/9/14
Meeting Date

Topic Education - SB 1226

Bill Number SB 1226 *(if applicable)*

Name Tanya Cooper

Amendment Barcode N/A *(if applicable)*

Job Title Director Gov. Relations

Address 325 W. Gaines street
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 850-245-9633

E-mail Tanya.Cooper@fldoe.org

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

Representing Dept. of Education

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

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

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

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

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/CS/SB 1396
INTRODUCER:	Rules Committee; Education Committee; and Senator Montford
SUBJECT:	Public Records/Public-private Partnerships/State Universities
DATE:	April 11, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Kim	McVaney	GO	**Favorable**
3.	Hand	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1396 makes confidential and exempt from disclosure, pursuant to Florida's public records law, certain unsolicited proposals, proprietary confidential business information, and board meetings at which these proposals and information will be discussed, relating to a public-private partnership filed with a state university board of trustees, and provides a statement of public necessity.

The public records and public meeting exemptions are subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption. 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.

The bill is tied to the passage of CS/CS/SB 900 and takes effect on the same date as CS/CS/SB 900 or similar legislation becomes law.

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.[1]

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."[2]

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.[3] 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.[4]

Florida Open Meetings Requirements

The Constitution of the State of Florida provides that:

> [a]ll meetings of any collegial public body … at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public … except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.[5]

Under Florida law, "[a]ll meetings of any board … at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."[6]

However, the Legislature is authorized to exempt meetings from such laws that otherwise require accessibility.[7] 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.[8]

---

[1] 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.
[2] Section 119.07(1)(a), F.S.
[3] Art. I, s. 24(c), Fla. Const.
[4] *Id.*
[5] Art. I, s. 24(b), Fla. Const.
[6] Section 286.011(2), F.S.
[7] Art. I, s. 24(c), Fla. Const.
[8] *Id.*

Open Government Sunset Review Act

The Open Government Sunset Review Act[9] provides that an exemption must serve an "identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."[10] The exemption must meet one of the following identifiable public purposes:[11]

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- 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.

A new public records or open meeting exemption shall be repealed on October 2nd of the fifth year after enactment, unless the Legislature reenacts the exemption.[12]

Senate Bill 900 (2014)

CS/CS/SB 1396 is the public records exemption bill for CS/CS/SB 900. CS/CS/SB 900 creates a public-private partnership process for state universities. CS/CS/SB 900 authorizes a state university board of trustees (board) or a direct-support organization (DSO)[13] to enter into public-private partnerships (P3s) for specified qualifying projects if the board or DSO determines the project is in the public's best interest.

The board or DSO may receive unsolicited proposals or may solicit proposals for qualifying projects and may, thereafter, enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.[14]

If the board or DSO receives an unsolicited proposal and intends to enter into a P3 agreement for the project, it must publish a notice in a newspaper of general circulation at least once a week for two weeks stating that it has received a proposal and will accept other proposals. The board or DSO may not accept any proposals after 120 days after the initial publication.

[9] Section 119.15, F.S.
[10] Section 119.15(6)(b), F.S.
[11] *Id.*
[12] Sections 119.15(3), 286.0111, F.S.,
[13] "Direct-support organization" means "an organization created pursuant to s. 1004.28 or any entity specifically established to incur debt." *See* CS/CS/SB 900 (2014) (Reg. Session).
[14] Section 1007.07(a), F.S., authorizes university boards of trustees to acquire real and personal property as well as engage in contracts.

After the notification period has expired, the board or DSO must rank the proposals received in order of preference. If negotiations with the first ranked firm are unsuccessful, the board or DSO may begin negotiations with the second ranked firm. The board or DSO may reject all proposals at any point in the process.

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt[15] from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.[16] If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.[17]

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from pubic meeting requirements.[18] A complete recording of the closed meeting must be made; no portion of the exempt meeting may be held off the record.[19]

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.[20] If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.[21] A recording and any records presented at an

[15] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).
[16] Section 119.071(1)(b), F.S.
[17] *Id.*
[18] Section 286.0113(2)(b), F.S.
[19] Section 286.0113(2)(c), F.S.
[20] *Id.*
[21] *Id.*

exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, and replies.[22]

III. Effect of Proposed Changes:

Unsolicited Proposals

CS/CS/SB 1396 provides that unsolicited proposals received by the board are confidential and exempt[23] from disclosure until the board[24] ranks the unsolicited proposals and provides notice of its intended decision.

CS/CS/SB 1396 also provides that unsolicited proposals are confidential and exempt until 90 days after the board rejects all unsolicited proposals, or 90 days after the board decides not to enter into an agreement. Proprietary confidential business records continue to be confidential and exempt from public disclosure even after the rest of the unsolicited proposal is made public.

Proprietary Confidential Business Information

CS/CS/SB 1396 defines "proprietary confidential business information" as information provided by a private entity to a state university board that:

- Has been designated by a private entity as information that is owned or controlled by the private entity;
- Is intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the private entity;
- Has not otherwise been intentionally disclosed by the private entity; and
- Is information concerning:
  - Trade secrets as defined in s. 688.002, F.S.;
  - Financial statements or financing terms;
  - Patent-pending or copyrighted designs;
  - Leasing or real property acquisition plans; or
  - Marketing studies.

Board Meetings

This bill provides that portions of a board meeting at which unsolicited proposals are discussed are exempt from Florida's open meetings laws.[25] The exempt portion of the meeting must be recorded and transcribed, including the times of commencement and termination of the meeting,

[22] *Id.*

[23] 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 (s*ee 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).

[24] In comparison, essentially all records of a university DSO are confidential and exempt from s. 199.07(1), F.S. *See* Section 1004.28(5), F.S.

[25] Section 286.011, F.S., and Art. I, s. 24(b), Fla. Const.

all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. The exempt portion of the meeting may not be off the record. Transcripts containing confidential business records are confidential and exempt.

Statement of Public Necessity

The bill provides a statement of public necessity for the exemption, which states that:

- If unsolicited proposals are publicly available before the board makes a decision, competitors could determine the creative financing used to fund the projects.
- If proprietary confidential business information is not made confidential and exempt, it may discourage a private entity from providing an unsolicited proposal to a board in order to avoid having proprietary confidential business information made public.
- Board review of unsolicited proposals or proprietary confidential business information needs to be made confidential and exempt in order to maintain the confidential and exempt status of this information.
- Unsolicited proposals may contain proprietary business information and trade secrets, such as patent-pending designs and financing terms.
- The harm that may result from the release of such information outweighs any public benefit that may be derived from disclosure of the information.

The public records and open meetings exemption provisions are subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions and, therefore, requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record and new public meetings exemptions and, therefore, includes a public necessity statement for both.

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:

This bill makes proprietary confidential business information and transcripts of the board discussion confidential and exempt from public disclosure, but does not provide any conditions for those records to be released or reviewed.

This bill does not make the portion of a DSO meeting at which unsolicited proposals are discussed exempt from Florida's open meetings laws.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1013.505(14) of the Florida Statutes, which will be created should CS/CS/SB 900, or a substantially similar bill, become law.

IX. Additional Information:

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

CS/CS by Rules on April 9, 2014
The committee substitute differs from CS/SB 1396 in the following way:

- Renumbers a subsection of s. 1013.505, F.S., to correspond with CS/CS/SB 900.

CS by Education on March 11, 2014:
The committee substitute differs from SB 1396 in the following ways:

- Creates and defines the term "proprietary confidential business information"; to provide that trade-secret, proprietary, and financial-type information contained within

the initial proposal is confidential and exempt from Florida's public records law; makes the entire initial proposal confidential and exempt for a specified period of time; reduces the time period that an unsolicited proposal is confidential and exempt, when all proposals are rejected, from 12 months to 90 days; and includes provisions authorizing the state university board hold confidential and exempt "shade" meetings to discuss unsolicited proposals and proprietary confidential business information.

- Updates the public necessity statement to address the new provisions.

B. Amendments:

None.

173944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Montford) recommended the following:

Senate Amendment

Delete lines 23 - 28
and insert:
Section 1. Subsection (15) is added to section 1013.505, Florida Statutes, as created by SB 900, 2014 Regular Session, to read:
1013.505 Public-private partnerships; state universities.—
(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

By the Committee on Education; and Senator Montford

581-02476-14 20141396c1

A bill to be entitled

An act relating to public records and meetings; amending s. 1013.505, F.S., relating to public-private projects for the upgrade of state university facilities and infrastructure; defining the term "proprietary confidential business information"; creating an exemption from public records requirements for unsolicited proposals held by a state university board of trustees for a specified period; providing that proprietary confidential business information remains confidential and exempt from public records requirements; creating an exemption from public meetings requirements for portions of meetings of a state university board of trustees at which confidential and exempt information is discussed; providing for future review and repeal of the exemptions under the Open Government Sunset Review Act; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsection (14) is added to section 1013.505, Florida Statutes, as created by SB 900, 2014 Regular Session, to read:

1013.505 Public-private partnerships; state universities and private entities.—

(14) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "proprietary

581-02476-14 20141396c1

confidential business information" means information that has been designated by a private entity when provided to a state university board of trustees as information that is owned or controlled by the private entity, is intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the private entity, has not otherwise been intentionally disclosed by the private entity, and is information concerning:

1. Trade secrets as defined in s. 688.002;

2. Financial statements or financing terms;

3. Patent-pending or copyrighted designs;

4. Leasing or real property acquisition plans; or

5. Marketing studies.

(b)1. If a board receives an unsolicited proposal under this section, the proposal is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time that the board receives and ranks the proposals as described in subsection (5) and provides notice of its intended decision.

2. An unsolicited proposal is not confidential and exempt for more than 90 days after the date the board rejects all proposals received for the project described in the unsolicited proposal or, if the board does not intend to enter into an agreement for the project, the date the unsolicited proposal is received. However, even if the board rejects all proposals or decides not to enter into an agreement for the project described in the unsolicited proposal, any proprietary confidential business information contained in the unsolicited proposal shall remain confidential and exempt from s. 119.07(1) and s. 24(a),

Art. I of the State Constitution.

(c)1. A portion of a meeting of a state university board of trustees at which information that is confidential and exempt under paragraph (b) is discussed, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. An exempt portion of a meeting shall be recorded and transcribed. The board shall record the times of commencement and termination of the meeting, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of a meeting may not be off the record.

3. A portion of the transcript of a meeting which reveals proprietary confidential business information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. II of the State Constitution.

(d) 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. (1) The Legislature finds that it is a public necessity that an unsolicited proposal held by a state university board of trustees pursuant to s. 1013.505, Florida Statutes, be confidential and exempt from public records requirements until the board provides notification of its decision or its intent to make a decision after ranking proposals under s. 1013.505(5)(c), Florida Statutes. The protection of information contained in unsolicited proposals serves a public need by encouraging private investment in state university facilities and further promotes timely and cost-

effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects that will be principally used by a state university in serving the university's core mission that may not be satisfied by existing procurement methods. These unsolicited proposals may contain proprietary confidential business information, and, if such information is made publicly available before a state university board of trustees makes a decision regarding a proposal, competitors could determine the creative financing used to fund these projects. If such information is not protected, it may discourage a private entity from providing an unsolicited proposal to a board in order to avoid having proprietary confidential business information and other business information made public. This exemption is narrowly drawn in that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the board rejects all proposals received for the project described in the unsolicited proposal or, if the board does not intend to enter into an agreement for the project, the date the unsolicited proposal is received. An unsolicited proposal may remain confidential and exempt from public records requirements beyond that period only if it contains proprietary confidential business information.

(2) The Legislature further finds that it is a public necessity that a portion of a meeting of a state university board of trustees at which information made confidential and exempt from public records requirements under this act is discussed be exempt from public meetings requirements in order to maintain the confidential and exempt status of this

information. Public oversight is preserved by requiring a transcript of any portion of such closed meetings of the board.

Section 3. This act shall take effect on the same date that SB 900 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/14
Meeting Date

Topic Public Private Partnership Public Meeting Bill Number 1396 *(if applicable)*

Name Richard Watson Amendment Barcode *(if applicable)*

Job Title Legislative Counsel

Address P.O Box 10038 Phone 850 222-0000
Street

Tallahassee FL 32302 E-mail rick@rmkassociates.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Builders and Contractors of FL

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 840
INTRODUCER:	Health Policy Committee and Senator Richter
SUBJECT:	Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board
DATE:	April 8, 2014
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 840, which is tied to CS/SB 872, creates a public records exemption for information related to the Alzheimer's Disease Research Grant Advisory Board's (board) receipt and review of research grant applications. The information is designated confidential and exempt, but may be disclosed under certain circumstances. The bill also exempts from the public meetings laws those portions of the Board's meetings at which the grant applications are discussed. The bill requires that the closed meetings be recorded and disclosed under specified circumstances.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

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

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

II. Present Situation:

Ed and Ethel Moore Alzheimer's Disease Research Program

CS/SB 872, which is tied to CS/SB 840, creates the Ed and Ethel Moore Alzheimer's Disease Research Program to fund research to help prevent or cure Alzheimer's disease. Awards must be made through a competitive, peer-reviewed process in any of the following categories:

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

The bill creates an 11-member Alzheimer's Disease Research Grant Advisory Board to provide the State Surgeon General input on the scope of the research program and its recommendations for proposals to be funded. The State Surgeon General, in turn, awards grants, after consulting with the board, on the basis of scientific merit. The board may also advise on program priorities; assist in developing linkages with nonacademic entities; and develop and provide oversight of mechanisms for disseminating research results.

The board reports annually to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General on elements of the program's implementation, its impact on leveraging additional funding, progress towards its goals, and recommendations to further its mission.

Implementation of the program is contingent upon an appropriation.

Public Records and Public Meetings 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 Act[3] guarantees every person's right to inspect and

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.

copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

The Florida Constitution also requires that all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken or public business of such body is to be transacted or discussed be open and noticed to the public.[6] In addition, the Sunshine Law[7] requires all meetings of any board or commission of any 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 public 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 provisions[11] 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

[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 "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)). 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] Article I, Section 24(b), of the Florida Constitution.

[7] Section 286.011, F.S. Section 286.011, F.S., has been construed to apply to any gathering, formal or informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by that board or commission. *See generally Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973).

[8] Section 286.011(1)-(2), F.S. The intent of the Legislature is to "extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control." *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

[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 (s*ee 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

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.[14] The Act provides that a public records or open meetings exemption may be 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]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[18] A public necessity statement and a two-thirds vote for passage are not required 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[19] to the exemption is created.[20]

III. Effect of Proposed Changes:

The bill creates a public records exemption for grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board and the records, except the final recommendations, generated by the board during its review. The information is confidential and exempt.[21] 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] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

[19] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

[20] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

[21] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. *See supra* note 9.

records may be released; however, with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by court order upon a showing of good cause.

The bill further provides that those portions of the board's meetings at which the grant applications are discussed are exempt from the public meetings law. The bill requires that the closed portions of the meetings be recorded and the recordings may be released under the same circumstances as apply to the exempt records—with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by court order upon a showing of good cause.

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

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states that the public records exemption is necessary to protect the intellectual property of the applicants, to promote scientific innovation, and to ensure a peer review process that conforms to national practices. It states that the public meetings exemption is necessary to ensure candid exchanges among reviewers, thereby ensuring that decisions are based on merit and not subject to bias or undue influence.

The bill takes effect on the same date CS/SB 872 or similar legislation takes effect, if adopted during the 2014 Session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I 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

Section 24(c), Art. I 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:

CS/SB 840 protects sensitive, intellectual data, which if released, could result in economic harm to the applicants if it were obtained and used by others who might be competing for similar grants or to develop pharmaceuticals or other treatments of a proprietary nature.

C. Government Sector Impact:

The impact would be the same for applications from public institutions as described above for applications from private researchers.

In addition, the bill could create a minimal fiscal impact for the DOH, because staff responsible for complying with public records requests may need training related to the new public records exemption.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.82(3) 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 March 19, 2014:

- Amends the directory and the effective date to add references to CS/SB 872, which is the substantive tied bill.
- Requires that closed portions of meetings at which applications are discussed be recorded and released in accordance with the procedures applicable to the exempt records.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Richter

588-02825-14 2014840c1

A bill to be entitled

An act relating to public records and meetings; amending s. 381.82, F.S.; providing an exemption from public records requirements for research grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board under the Ed and Ethel Moore Alzheimer's Disease Research Program and records generated by the board relating to the review of the applications; providing an exemption from public meetings requirements for those portions of meetings of the board during which the research grant applications are discussed; requiring the recording of closed portions of meetings; authorizing disclosure of such confidential information under certain circumstances; providing for legislative review and repeal of the exemptions under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (d) is added to subsection (3) of section 381.82, Florida Statutes, as created by SB 872, 2014 Regular Session, to read:

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

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

(d)1. Applications submitted to the board for Alzheimer's disease research grants under this section and, with the exception of final recommendations, records generated by the board relating to the review of such applications are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Portions of a meeting of the board at which applications for Alzheimer's disease research grants under this section are discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed portion of a meeting must be recorded. The recording shall be maintained by the board and shall be subject to disclosure in accordance with subparagraph 3.

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

4. This paragraph 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. (1) The Legislature finds that it is a public necessity that applications for Alzheimer's disease research grants submitted to the Alzheimer's Disease Research Grant Advisory Board and records generated by the board relating to the review of such applications are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The research grant applications and the records generated by the board relating to the review of such

applications contain information of a confidential nature, including ideas and processes, which could injure the affected researchers and stifle scientific innovation if publicly disclosed. Maintaining confidentiality is a hallmark of scientific peer review when awarding grants and is practiced by the National Science Foundation and the National Institutes of Health. The Legislature further finds that any public benefit derived from the disclosure of such information is significantly outweighed by the public and private harm which could result from the disclosure of such applications and records.

(2) The Legislature finds that it is a public necessity that portions of meetings of the Alzheimer's Disease Research Grant Advisory Board at which the applications are discussed be held exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. Maintaining confidentiality allows for candid exchanges among reviewers critiquing applications. The Legislature further finds that closing access to those portions of meetings of the board during which the Alzheimer's disease research grant applications are discussed serves a public good by ensuring that decisions are based upon merit without bias or undue influence. This exemption is narrowly drawn in that only those portions of meetings at which the applications for research grants are discussed are exempt from public meetings requirements.

Section 3. This act shall take effect on the same date that SB 872 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic _____ Bill Number 840 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

April 3, 2014

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

Dear Chairman Thrasher:

CS for SB 840, Public Records bill, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:
☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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 1278
INTRODUCER:	Governmental Oversight and Accountability Committee; Banking and Insurance Committee and Senator Richter
SUBJECT:	Public Records/Office of Financial Regulation
DATE:	April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1278 creates a public records exemption for informal enforcement actions of the Office of Financial Regulation (OFR) and trade secrets held by the OFR in accordance with its statutory duties with respect to the Financial Institutions Codes. In addition, the bill defines:

- Examination report,
- Informal enforcement action,
- Working papers, and
- Personal financial information.

The OFR regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (codes), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. Currently, s. 655.057, F.S., exempts certain records held by the OFR relating to the supervision and regulation of financial institutions chartered in Florida.

The bill provides for repeal of the exemption for informal enforcement actions and trade secrets on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. Because this bill creates a new public records exemption, the bill provides a statement of public necessity as required by the State Constitution.

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 public record or public meeting exemption.

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 Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] 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 provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

---

[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 (s*ee 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).

The Open Government Sunset Review Act (OGSR) 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] OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12]

Regulation of State-Chartered Financial Institutions

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("codes"), chapters 655 to 667, F.S. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

Current Public Records Exemptions under the Codes

Currently, s. 655.057, F.S., of the codes contains the following public records exemptions:

- All records and information relating to an "active" investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, information remains confidential and exempt to the extent that disclosure would:
  - Jeopardize the integrity of another active investigation;
  - Impair the safety and soundness of the financial institution;
  - Reveal personal financial information;
  - Reveal the identity of a confidential source;
  - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
  - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers*, or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
  - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within one year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Lists required to be maintained and submitted to the OFR by Florida-chartered credit unions and mutual associations of their members' names and residences. These list of members are confidential and exempt.

[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.

- Lists required to be maintained and submitted to the OFR by Florida-chartered banks, trust companies, and stock associations of their shareholders' names, addresses, and number of shares held by each shareholder. Any portion of these lists which reveal the shareholders' identities is confidential and exempt.

In addition, s. 655.059, F.S., provides that the books and records of a financial institution are "confidential" and are available to specified persons, including the OFR.[13] However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the ch. 119, F.S., unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.[14] This statute merely prohibits financial institutions from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

III. Effect of Proposed Changes:

Informal Enforcement Actions

The bill creates a limited public records exemption for "informal enforcement actions" by the OFR. An informal enforcement action is defined to mean "a board resolution, document of resolution, or an agreement in writing between the office and a financial institution" that the office imposes on an institution after considering the administrative enforcement guidelines in s. 655.031, F.S., and determining that a formal enforcement action is not an appropriate enforcement remedy. However, the bill limits the exemption by providing that after an investigation relating to an informal enforcement action is completed or ceases to be active, an informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, only to the extent that disclosure would result in certain events (i.e., impair the safety and soundness of the financial institution; reveal investigative techniques or procedures, etc.).

The public necessity statement provides that public disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institutions. In addition, the public necessity statement provides that this exemption will, among other things, provide competitive equality to Florida-chartered institutions, because financial institutions that are federally chartered or chartered by other states are protected by those federal or state laws with regard to informal enforcement actions.

Trade Secrets

The bill creates a public records exemption for trade secrets, as defined in s. 688.002, F.S., that comply with s. 655.0591, F.S., and that are held by the OFR in accordance with its statutory duties with respect to the codes.

[13] In addition, s. 655.012(1)(b), F.S., grants the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR, as prescribed by the codes.
[14] Florida Attorney General Opinion 07-27.

The public necessity statement provides that disclosure of these trade secrets could result in a competitive disadvantage and economic loss to a financial institution.

Definitions

In addition to creating a definition of "informal enforcement action" for the new exemption, the bill defines the examination report, working papers, and personal financial information to clarify the existing exemptions in s. 655.057, F.S.

Statement of Public Necessity

Section 2 of the bill is the statement of public necessity supporting the new exemptions for informal enforcement actions and trade secrets. The bill provides legislative findings that informal enforcement actions and trade secrets must be kept confidential and exempt; and identified public purposes for exempting informal enforcement actions and trade secrets.

The bill will take effect on the same date that SB 1012 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:

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires a two-thirds vote of each house of the Legislature and a public necessity statement. The bill contains a public necessity statement for informal enforcement actions and trade secrets. This bill requires a two-thirds vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's protection of trade secrets and informal enforcement actions may benefit Florida-chartered financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace and reputational risk.

C. Government Sector Impact:

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to implementation of the public record exemption. In addition, the OFR could incur costs associated with redacting the 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 agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 655.057 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 26, 2014:
The CS/CS amends the bill so that the public records exemptions currently in s. 655.057, F.S., were not made subject to a new Open Government Sunset Review (pursuant to s. 119.15, F.S.).[15] Technical changes in s. 655.057, F.S., were also made.

The CS/CS makes the new exemptions for informal enforcement actions and trade secrets subject to the s. 119.15, F.S., the Open Government Sunset Review Act.

CS by Banking and Insurance on March 11, 2014:
The CS provides a reference to linked bill, SB 1012.

B. Amendments:

None.

[15] Section 655.057, F.S. was subject to an Open Government Sunset Review pursuant to s. 119.14, F.S., however, s. 119.14, F.S. was repealed on October 1, 1995.

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senator Richter

585-03262-14 20141278c2

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; defining terms; providing for future legislative review and repeal of the section; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the office are confidential and exempt from ~~the provisions of~~ s. 119.07(1) until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while such investigation is being conducted by the office with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal

Florida Senate - 2014 **CS for CS for SB 1278**

585-03262-14 20141278c2

proceedings. An investigation does not cease to be active if the office is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the office or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of the ~~such~~ records relating to the investigation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) to the extent that disclosure would:

(a) Jeopardize the integrity of another active investigation;

(b) Impair the safety and soundness of the financial institution;

(c) Reveal personal financial information;

(d) Reveal the identity of a confidential source;

(e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(f) Reveal investigative techniques or procedures.

(2) Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in this state are confidential and exempt from ~~the provisions of~~ s. 119.07(1). However, such reports or papers or portions thereof may be released to:

(a) The financial institution under examination;

(b) Any holding company of which the financial institution

is a subsidiary;

(c) Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;

(d) Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;

(e) Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or

(f) A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

(g) Examination, operation, or condition reports of a financial institution shall be released by the office within 1 year after the appointment of a liquidator, receiver, or conservator to the ~~such~~ financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

Any confidential information or records obtained from the office

pursuant to this paragraph shall be maintained as confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(3) Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or ceases to be active, informal enforcement actions are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the extent that disclosure would:

(a) Jeopardize the integrity of another active investigation.

(b) Impair the safety and soundness of the financial institution.

(c) Reveal personal financial information.

(d) Reveal the identity of a confidential source.

(e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.

(f) Reveal investigative techniques or procedures.

(4) Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the office in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5)~~(3)~~ ~~The provisions of~~ This section does ~~do~~ not prevent or restrict:

(a) Publishing reports required to be submitted to the office pursuant to s. 655.045(2)(a) or required by applicable

federal statutes or regulations to be published.

(b) Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks.

(c) Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.

(d) Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.

(e) Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to chapter 280.

Any confidential information or records obtained from the office pursuant to this subsection shall be maintained as confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(6)(a) ~~(4)(a)~~ Orders of courts or of administrative law judges for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge and, after the court or administrative law judge has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, such ~~said~~ documents shall be subject to further orders by the court or the administrative law judge to protect the

confidentiality thereof. An ~~Any~~ order directing the release of information is ~~shall be~~ immediately reviewable, and a petition by the office for review of such order shall automatically stays ~~stay~~ further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it operates ~~will operate~~ as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body or committee that ~~which~~ received the records or information, except in a case involving investigation of charges against a public official subject to impeachment or removal.~~,~~ ~~and then~~ Disclosure of such information shall be only to the extent determined necessary by the legislative body or committee ~~to be necessary~~.

(7) ~~(5)~~ Every credit union and mutual association shall maintain, in the principal office where its business is transacted, full and correct records of the names and residences of all the members of the credit union or mutual association. Such records are ~~shall be~~ subject to the inspection of all the members of the credit union or mutual association, and the officers authorized to assess taxes under state authority, during business hours of each business day. A current list of members shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, the list of the members of the credit union or mutual association is confidential and exempt from ~~the~~

~~provisions of~~ s. 119.07(1).

(8)~~(6)~~ Every bank, trust company, and stock association shall maintain, in the principal office where its business is transacted, full and complete records of the names and residences of all the shareholders of the bank, trust company, or stock association and the number of shares held by each. Such records are ~~shall be~~ subject to the inspection of all the shareholders of the bank, trust company, or stock association, and the officers authorized to assess taxes under state authority, during business hours of each banking day. A current list of shareholders shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, any portion of this list which reveals the identities of the shareholders is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(9)~~(7)~~ Materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies~~, federal or state, shall~~ remain the property of the submitting agency or the corporation, and any document request must be made to the appropriate agency. Any confidential documents supplied to the office or to employees of any financial institution by other state or federal governmental agencies are~~, federal or state, shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1). Such information shall be made public only with the consent of such agency or the corporation.

(10)~~(8)~~ Examination reports, investigatory records, applications, and related information compiled by the office, or

photographic copies thereof, shall be retained by the office for ~~a period of~~ at least 10 years.

(11)~~(9)~~ A copy of any document on file with the office which is certified by the office as being a true copy may be introduced in evidence as if it were the original. The commission shall establish a schedule of fees for preparing true copies of documents.

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

(a) "Examination report" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045(1).

(b) "Informal enforcement action" means a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which:

1. The office imposes on an institution when the office considers the administrative enforcement guidelines in s. 655.031 and determines that a formal enforcement action is not an appropriate administrative remedy;

2. Sets forth a program of corrective action to address one or more safety and soundness deficiencies and violations of law or rule at the institution; and

3. Is not subject to enforcement by imposition of an administrative fine pursuant to s. 655.041.

(c) "Personal financial information" means:

1. Information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt.

2. Information relating to a person's financial transactions of any kind.

3. Information relating to the existence, identification,

nature, or value of a person's assets, liabilities, or net worth.

(d) "Working papers" means the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032 or s. 655.045. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation.

(13) ~~(10)~~ A ~~Any~~ person who willfully discloses information made confidential by this section commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(14) Subsections (3) and (4) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that informal enforcement actions and trade secrets, as defined in s. 688.002, Florida Statutes, be kept confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) Public disclosure of an informal enforcement action could further impair the safety and soundness of a financial institution that is subject to the action. Furthermore, the public disclosure of this information could erode public confidence in financial institutions and the financial

institution system in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institutions. Maintaining informal enforcement actions as confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution will provide to the financial institutions that are chartered by this state the same protections as those already available to financial institutions chartered under federal law and by other states, maintain public confidence in financial institutions subject to the financial institutions codes, protect the safety and soundness of the financial institution system in this state, protect the interests of the depositors and creditors of financial institutions, promote the opportunity for state-chartered financial institutions to be and remain competitive with financial institutions chartered by other states or the United States, and otherwise provide for and promote the purposes of the financial institutions codes as set forth in s. 655.001, Florida Statutes.

(3) A trade secret derives independent economic value, actual or potential, from not being generally known to, and not readily ascertainable by, other persons who can obtain economic value from the disclosure or use of the trade secret. Without an exemption for a trade secret held by the office, that trade secret becomes a public record when received and must be divulged upon request. Divulging a trade secret under the public records law would give business competitors an unfair advantage and destroy the value of that property, causing a financial loss to the person or entity submitting the trade secret and weakening the position of that person or entity in the

marketplace.

Section 3. This act shall take effect on the same date that SB 1012 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 990
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Ring
SUBJECT:	Public Officers and Employees
DATE:	April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.	Carlton	Roberts	EE	**Favorable**
3.	McKay	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 990 deletes a limited exception to a general prohibition in the Code of Ethics for public officers and employees. As a result, (1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and (2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.

This bill takes effect July 1, 2014.

II. Present Situation:

Code of Ethics: Conflicting Employment or Contractual Relationship

Section 112.313, F.S., specifies standards of conduct for public officers[1], employees of agencies[2], and local government attorneys. Pursuant to s. 112.313(7), F.S., a public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.[3]

There is an exception to the above prohibitions in s. 112.313(7)(a)1., which provides that when the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by s. 112.313, F.S.

Special Districts

"Special tax district" is not defined in ch. 112, F.S., or ch. 189, F.S., which provides the general provisions for special districts. Section 189.403(1), F.S., defines a "special district" as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.

According to the Special District Information Program at the Florida Department of Economic Opportunity (DEO), there are currently 1,637 special districts.[4] Not all of these are special *tax* districts, but the DEO data does not break out districts with taxation authority as a subset of all the special districts. The table below summarizes the top five specialized functions out of the 74 specialized functions of the 1,637 special districts:

---

[1] Pursuant to s. 112.313(1), F.S., the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.
[2] Pursuant to s. 112.312(2), F.S., "agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.
[3] See also the Florida Commission on Ethics' GUIDE to the SUNSHINE AMENDMENT and CODE of ETHICS for Public Officers and Employees, p.4, located at http://www.ethics.state.fl.us/publications/2014%20Guide.pdf.
[4] Information available at http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm

Special District Function	Number
Community development	575
Community redevelopment	213
Housing authorities	93
Drainage and water control	86
Fire control and rescue	65

III. Effect of Proposed Changes:

The bill deletes s. 112.313(7)(a)1., F.S., which provides a limited exemption from the conflicting employment or contractual relationship prohibition in s.112.313(7)(a), F.S. As a result, the 1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and 2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.

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:

Indeterminate, depending on whether the existing limited exemption is enabling employment or contractual relationships that will be prohibited by the repeal of that exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Some enabling statutes for districts currently covered by the exemption may contain similar, if not identical, language. As a result, repeal of s. 112.313(7)(a)1, F.S., would not affect those types of districts unless the corresponding language in the enabling legislation is also repealed.

VII. Related Issues:

The bill does not apply retroactively, which would transform existing employment or contractual relationships, which were not unethical when initiated, into a violation of the ethics code. In a criminal law context, such an ex post facto law might be unconstitutional. The legislature may wish to clarify whether the bill only applies to employment or contractual relationships entered into after the effective date of the bill.

VIII. Statutes Affected:

This bill substantially amends s. 112.313 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.)

CS by Governmental Oversight and Accountability on March 13, 2013:
The CS reverts some grammatical changes made in the original filed bill back to existing statutory language.

B. Amendments:

None.

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

585-02535-14 2014990c1

A bill to be entitled

An act relating to public officers and employees; amending s. 112.313, F.S.; removing an exception from prohibited employment or a prohibited contractual relationship for an officer or employee of certain special tax districts or an agency organized pursuant to ch. 298, F.S.; providing an effective date.

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

Section 1. Subsection (7) of section 112.313, Florida Statutes, is amended to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) A ~~No~~ public officer or employee of an agency may not ~~shall~~ have or hold any employment or contractual relationship with any business entity or any agency ~~which is~~ subject to the regulation of, or ~~is~~ doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor may ~~shall~~ an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

Florida Senate - 2014 **CS for SB 990**

585-02535-14 2014990c1

~~1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.~~

~~2.~~ However, if ~~When~~ the agency ~~referred to~~ is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power that ~~which~~ the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, ~~then~~ employment or a contractual relationship with such business entity by a public officer or employee of a legislative body is ~~shall~~ not ~~be~~ prohibited by this subsection or ~~be~~ deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

Section 2. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2014
Meeting Date

Topic _____ Bill Number 990 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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:	SB 1678
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Agency Personnel Information
DATE:	April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kim	McVaney	GO	**GO SPB 7080 as introduced**
1.	Stearns	Yeatman	CA	**Favorable**
2.	Kim	Phelps	RC	**Favorable**

I. Summary:

SB 1678 reenacts the existing public records exemption for former and current agency employees' Social Security numbers under s. 119.071(4)(a), F.S. This bill provides that an agency may disclose an employee's Social Security number if required by law, a court order, if another agency needs the Social Security number in order to perform its duties, or if an employee consents to the release of his or her Social Security number. This bill eliminates the sunset date of the exemption, thus continuing the current public records exemption.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. 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 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 Act[4]

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] FLA. CONST., art. I, s. 24(b).
[4] Chapter 119, F.S.

guarantees every person's right to inspect and copy any state or local government public record[5] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6] The Sunshine Law[7] 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 provisions[11] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[12]

Open Government Sunset Review Act

The Open Government Sunset Review Act, s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings

[5] 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)).

[6] Section 119.07(1)(a), 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 (s*ee 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).

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]

Section 119.15, F.S., 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:

- 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]

In addition to finding the exemption serves one of the above purposes, the Legislature must find that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption.

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

When reenacting an exemption that will otherwise be repealed, a public necessity statement and a two-thirds vote are required for passage if the exemption is expanded.[18] A public necessity statement and a two-thirds vote for passage are not required 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[19] to the exemption is created.[20]

---

[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] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

[19] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

[20] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

Exemption Under Review: Agency Personnel Social Security Numbers

Section 119.071(4)(a), F.S., provides that the Social Security numbers of all current and former agency employees are confidential and exempt from public disclosure under s. 119.071(1), F.S., and s. 24, Art. 1 of the Florida Constitution. Section 119.071(4)(a), F.S., currently does not contain any means for agencies to disclose employee Social Security numbers.[21] This exemption will stand repealed on October 2, 2014, unless saved from repeal by the Legislature.

Review Findings and Recommendations

On August 16, 2013, the Senate Governmental Oversight and Accountability Committee and the House Government Oversight Subcommittee surveyed state agencies regarding the need to keep agency personnel Social Security numbers exempt from public disclosure under s. 119.071(4)(a), F.S. Twenty-five agencies responded, and all of the agencies stated that s. 119.071(4)(a), F.S., should not be repealed. Several agencies cited the potential for identity theft and criminal activity as the rationale for keeping employees' Social Security numbers exempt from public disclosure. Agencies reported that they currently release Social Security numbers to government entities in order to perform background checks, to process payroll information, or if their employees are the subject of criminal investigations. None of the agencies reported that this exemption had been the subject of litigation.

III. Effect of Proposed Changes:

Section 1 provides agencies the ability to keep employee Social Security numbers confidential and exempt from public disclosure while permitting employing agencies to release Social Security numbers when necessary.

The bill clarifies the law by incorporating provisions for release within s. 119.071(4)(a), F.S. Agencies will be permitted to release employee Social Security numbers under the following conditions: as required by state or federal law or court order; to another agency or governmental entity when it is necessary for the receiving agency or entity to perform its duties; and when an employee gives his or her written consent.

The bill removes the October 2, 2014, repeal date of this public records exemption.

Section 2 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[21] Agencies can use s. 119.071(5), F.S., when disclosure is required.

B. Public Records/Open Meetings Issues:

This bill does not expand or create a public records exemption and therefore it is not subject to the Open Government Sunset Review Act, s. 119.15, F.S. This bill requires a simple majority vote for passage.

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 substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability

585-02567-14 20141678__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for social security numbers of current and former agency employees held by an employing agency; saving the exemption from repeal under the Open Government Sunset Review Act; authorizing an employing agency to disclose the social security number of a current or former agency employee under certain circumstances; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(a)1. The social security numbers of all current and former agency employees which ~~numbers~~ are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:

a. If disclosure of the social security number is expressly required by federal or state law or a court order.

b. To another agency or governmental entity if disclosure of the social security number is necessary for the receiving

585-02567-14 20141678__

agency or entity to perform its duties and responsibilities.

c. If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature~~.

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 1308
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Simmons
SUBJECT:	Insurer Solvency
DATE:	April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1308 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR). The bill incorporates provisions of model acts of the National Association of Insurance Commissioners (NAIC) and additional recommendations of the OIR. Some of the NAIC provisions in the bill are in response to the 2008 financial crisis and the globalization of the insurance market and are intended to enhance the regulation of insurers as well as their affiliated entities and provide more solvency tools for evaluating risks within insurance groups. The bill:

- Authorizes the OIR to implement principle-based reserving for life insurers, which allows life insurers to calculate reserves that reflect current mortality rates, the life insurer's business model, and its particular risk profile.
- Requires persons that acquire controlling interests to disclose enterprise risk, and requires that ultimate controlling persons must file an annual enterprise risk report with the OIR which identifies material risk within the insurance company holding company system which could pose a risk or have a material adverse effect upon the insurer.
- Provides that a presumption of control may be rebutted by filing a disclaimer of control on a form prescribed by the OIR or by providing a copy of a Schedule 13G on file with the Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer.

- Incorporates a risk-based capital trend test for life and health as well as property and casualty insurers and requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital reports.
- Requires insurers to file actuarial opinion summaries and supporting workpapers annually and creates and evidentiary privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information and provides for confidentiality of enterprise risk reports, actuarial opinion summaries, and other information.
- Authorizes the OIR to impose sanctions for noncompliance with the reporting requirements of s. 628.461, F.S., and s. 628.801, F.S.
- Allows the OIR to participate in supervisory colleges with other regulators for the regulation of any domestic insurer that is part of an insurance holding company system having international operations.

II. Present Situation:

States primarily regulate insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR[1] is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,[2] monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,[3] rehabilitation,[4] or liquidation[5] of an insurance company if it is in unsound financial condition or insolvent.

NAIC Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that legal, financial, and organizational standards are being fulfilled by the OIR. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR has identified model provisions or updates that need to be incorporated in the current Insurance Code for accreditation purposes. Updates to the Insurance Code relating to the Property and Casualty Trend Test of the Risk-Based Capital Model Act and the Property and Casualty Actuarial Opinion Model Law are necessary since the accreditation effective dates for these provisions

[1] Section 20.121(3)(a), F.S.
[2] Sections 624.411 - 624.414, F.S.
[3] Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.
[4] In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.
[5] In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, distribute them to various claimants, and shut down the company.

were January 1, 2012, and January 1, 2010, respectively. In addition, two other NAIC model acts, Risk-Based Capital for Health Organizations and the Life Trend Test of the Risk Based Capital Model Act are necessary for accreditation effective January 1, 2015, and January 1, 2017, respectively. The accreditation effective date for amendments to the Insurance Holding Company System Regulatory Act is January 1, 2016.

Model Holding Company Act and Regulation

The NAIC has adopted amendments to its Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions. In light of the recent financial crisis, the NAIC, insurance regulators, and other stakeholders reviewed the potential impact of non-insurance operations on insurance companies in the same group to determine the best methods to evaluate the risks and activities of entities within a holding company system. The revised model act adds the concept of "enterprise risk" and requires controlled insurers to file a new annual form (Form F) detailing specified matters relating to the holding company group. The NAIC model act defines "enterprise risk" as:

> [A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[6]

Amendments to the model act also address divestitures. Prior to the amendments to the model act, a person could divest control of an insurer without prior regulatory review as long as no single acquirer obtained control of 10 percent or more of the outstanding voting shares. Amendments to the model act generally require a person divesting control over an insurer to provide 30 days' prior notice to the regulator.

The revised model act also provides insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.[7]

The amendments to the model acts also authorize a regulator to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system having international operations in order to determine compliance. Insurers must pay for expenses associated with the insurance regulator's participation in a supervisory college. State, federal, and international regulators may participate in the supervision of the insurer or its affiliates.[8]

[6] Section 1F of the NAIC Insurance Holding Company System Regulatory Act.
[7] Section 6B of the NAIC Insurance Holding Company System Regulatory Act.
[8] Section 7 of the NAIC Insurance Holding Company System Regulatory Act.

According to the NAIC Center for Insurance Policy & Research, "a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions."[9] Supervisory colleges facilitate oversight of internationally active insurance companies at the group level and promote regulatory information sharing, subject to applicable confidentiality agreements.[10]

Risk-Based Capital for Insurers and Health Organizations

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers various risks depending on the type of insurer (e.g., subsidiary insurance companies, fixed income, equity, credit, reserves, and net written premium). The RBC standard provides a safety net for insurers, is uniform among states, and provides state insurance regulators with authority for timely corrective action.[11] The NAIC's *Risk-Based Capital for Insurers Model Act* provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is incorporated in the Insurance Code; however, it does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.[12] Prepaid limited health service organizations provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,[13] and HMOs generally provide a range of health coverage with contracted providers.[14] The NAIC Risk-Based Capital Health Organizations Model Act will be effective as an accreditation standard beginning January 1, 2015, and applies to health maintenance organizations and prepaid limited health service organization.

In March 2006, the NAIC adopted revisions to the Risk-Based Capital for Insurers Model Act. The revisions incorporate a new Property and Casualty Trend Test for property and casualty companies. The accreditation effective date for property and casualty trend test was January 1, 2012. A statutory provision relating to a life trend test was already included in the RBC for Insurers Model Act; but the changes equalize the trigger between life and health, property, and casualty companies that prompt the need for a trend test calculation. The model was amended to cite the Property and Casualty Trend Test as a means for the company action level to be triggered.

[9] "Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination," at http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm (last visited on March 19, 2014).
[10] NAIC on Supervisory Colleges at http://www.naic.org/cipr_topics/topic_supervisory_college.htm. (last visited on March 19, 2014). Additionally, the linked/public records bill, CS/SB 1300, provides for confidential and exempt treatment of regulatory information, including within the context of a supervisory college that is shared between insurance regulators and law enforcement, pursuant to confidentiality agreements.
[11] NAIC on Risk-Based Capital at http://www.naic.org/cipr_topics/topic_risk_based_capital.htm (last visited on March 19, 2014).
[12] Section 624.4085, F.S.
[13] Section 636.003(7), F.S.
[14] Section 641.19(12), F.S.

Property and Casualty Actuarial Opinion Model Law

The NAIC Property and Casualty Actuarial Opinion Model Law specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report, and workpapers to support each actuarial opinion, which must be treated as a confidential and privileged document.

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialist. These insurers are also required to provide supporting work papers upon the OIR's request.[15] Currently, these materials are not exempt from ch. 119, F.S., relating to public records.

Valuation of Life Insurance and Principle-Based Reserves

For insurance purposes, reserves are liabilities that are reported on insurers' balance sheets for the ultimate payment of future losses and policyholder benefits. Reserves are often set using factors and rates determined by an insurer's actuary consistent with guidelines for insurance products established in state law consistent with NAIC models or laws. Reserve levels for insurers operating in the United States and offering certain life insurance and annuity products are set according to a state law, with rules-based formula that, some insurers claim, results in excessive reserves that detract from the insurer's ability to maximize the value of its capital.

Critics of the current formula-based approach to reserving for life insurance contend that it: (1) is static and too conservative; (2) fails to capture all the particularized risks inherent in increasingly complicated life insurance benefits and guaranties; and (3) does not reflect life insurers' business practices, such as the hedging of risk through derivatives use plans. However, reserves are subject to an annual analysis to verify the adequacy of reserves through different models, with additional reserves established if necessary. Many industry participants argue that redundant reserve requirements force reliance upon reinsurance captives in order to reduce excessive reserves and allow life insurers to use capital more effectively.

While the current formula-based approach to quantifying reserves uses standardized formulas, principle based reserves (PBR) relies upon an insurer's internal risk modeling and analysis techniques, including the use of insurer-specific claims experience with specific portfolios of business, to incorporate consideration of particularized risks and thereby to more closely tailor calculations to the actual attributes of insurer portfolios.

In response to concerns about reserves, the National Association of Insurance Commissioners (NAIC) revised the NAIC Standard Valuation Law (SVL) and the Standard Nonforfeiture Law to incorporate the NAIC Valuation Manual as the authoritative source for reserves and other requirements.[16] The revised SVL, as adopted by the NAIC, preserves state authority to require insurers to change any assumption or method, as necessary, and authorize the regulator to engage a qualified actuary at the expense of an insurer to review compliance with the valuation manual

[15] Section 624.424, F.S.
[16] The Valuation Manual was adopted by the NAIC on December 2, 2012.

requirements. The manual includes experience reporting, actuarial opinion and memorandum requirements, PBR reporting, and corporate governance requirements. Many of the requirements are dynamic in nature, and are responsive to fluctuations in the insurance marketplace and the economy. The requirements of the manual are applicable to life insurance contracts, accident and health contracts, and other specified contracts. Some products are not subject to PBR; however, some products, such as term life insurance policies and universal life insurance policies with a secondary guarantee[17] issued on or after the operative date of the manual become subject to PBR once the manual is operative. The PBR method will be effective only after the SVL law revisions are adopted by at least 42 states representing 75 percent of total U.S. premium and then, after a 3-year transition period. However, insurers can implement PBR anytime during the transition period.

Under current Florida law, life insurers are required to calculate reserves for life insurance policies based on a standardized formula prescribed by the NAIC Model Standard Valuation Law (SVL) and codified in s. 625.121, F.S. The SVL incorporates mortality tables. The NAIC Standard Nonforfeiture Law establishes minimum benefit values if policies are surrendered or lapsed and is codified in s. 627.476, F.S. For purposes of the implementation of PBR, the NAIC revised the Standard Nonforfeiture Law to reference the Standard Valuation Law and the Valuation Manual as the source for mortality and interest rates used in nonforfeiture calculations. However, such changes apply to policies issued on or after the operative date of the valuation manual. The PBR requirements do not apply to policies issued prior to the operative date of the valuation manual.

In 2013, seven states enacted PBR enabling legislation (Arizona, Indiana, Louisiana, Maine, New Hampshire, Rhode Island, and Tennessee). In 2013, Texas enacted the Standard Nonforfeiture Law revisions. Nine states have introduced PBR enabling legislation in 2014 (Hawaii, Illinois, Iowa, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, and Virginia). Five more states have drafted legislation for 2014 introduction (Connecticut, Florida, Georgia, Missouri, and West Virginia).[18]

III. Effect of Proposed Changes:

Examinations (Section 2)

Section 2 amends s. 624.319, F.S., relating to examinations, to provide that the production of documents during the course of an examination or investigation does not constitute waiver of the attorney-client or work-product privileges.

Captives (Section 5)

Section 5 requires insurers that reinsure through a captive insurance company to file with the OIR an annual report containing certain information specific to reinsurance assumed by each captive.

[17] A universal life policy with a secondary guarantee is also known as a no-lapse guarantee. The policy will not lapse if certain conditions are met.

[18] American Council of Life Insurers PBR Implementation Status, February 3, 2014, (on file with Senate Banking and Insurance staff).

Risk-Based Capital for Insurers and Health Organizations (Sections 4, 15, 16, and 17)

Section 4 amends s. 624.4085, F.S., to revise the definition of the term, "life and health insurer," for purposes of risk-based capital (RBC) requirements to include HMOs and prepaid limited health service organizations that are authorized in Florida and one or more other states, jurisdictions, or countries effective January 1, 2015. The section also clarifies the RBC requirements for a life and health insurer that reports using the life and health annual statement instructions and changes a company action level event to total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0.

Effective January 1, 2015, the section also defines the RBC requirements for a life and health, as well as property and casualty, insurer that reports using the health annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level RBC and 3.0 and triggers the trend test calculation. An insurer that fails the Trend Test is subject to filing a corrective action plan with the OIR.

Sections 15 through 17 provide that prepaid limited health service organizations authorized in Florida are subject to the RBC requirements and confidentially requirements pursuant to s. 624.4085, F.S., and s. 624.40851, F.S., respectively. The bill also provides that an HMO that is authorized in one or more other states, jurisdictions, or countries is subject to the risk-based capital requirements for insurers as well as the confidentiality protections of risk-based capital information provided in s. 624.4085, F.S., and s. 624.4615, F.S., respectively. Finally, an HMO that is a member of a holding company system is subject to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S., but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S. These provisions are effective January 1, 2015.

Model Insurance Holding Company Act and Regulation (Sections 1, 3, 10-14)

Section 1 provides definitions of affiliate, affiliated person, control, and NAIC. The definitions of the terms, "affiliated person" and "controlling person" currently defined in s. 628.461(12), F.S., are modified and transferred. The bill revises the definition of the term, "affiliated person," to include persons affiliated through 10 percent instead of 5 percent of ownership, control, or management. The bill revises the definition of the term, "controlling person," to require a 10 percent rather than a 25 percent ownership or interest.

Section 3 amends s. 624.402, F.S., to provide a technical, conforming amendment.

Section 10 amends s. 628.461, F.S., relating to acquisition of controlling stock, and specifies that the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists as described in Section 11 of the bill. Effective January 1, 2015, the bill provides that the person required to file the statement pursuant to s. 628.461(1), F.S., will provide the annual report specified in s. 628.801(2), F.S., if control exists. The bill provides that a person may rebut a presumption of control by filing a disclaimer of control on a form prescribed by the OFR, as required by the model act, or by providing a copy of a Schedule 13G

on file with the U.S. Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer is required to file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.

Currently, s. 628.461, F.S., provides that a person or affiliated person must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5 percent or more of a domestic stock insurer or of a controlling company. The statement must contain certain criminal, employment, and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control on a form prescribed by the OIR, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent). In lieu of the disclaimer-of-control form, the person may file a copy of a Schedule 13G filed with the Securities and Exchange Commission.

During the pendency of the OIR's review of an acquisition filing, the insurer may not make a "material change" to its operation or management, unless the OIR has approved or has been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus.

Section 11 amends s. 628.801, F.S., relating to the regulation of insurance holding companies, to amend and update the provisions of the NAIC Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company System Model Regulation by incorporating reference to the 2010 version. The section requires insurers to file an annual holding company registration statement, including disclosure of material transaction between affiliates. Currently, authorized insurers are required to register with the OIR and be subject to regulation with respect to the relationship with the holding company. Pursuant to its authority under ch. 624, F.S., the OIR may examine any insurer and its affiliates registered under this section to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party.

Effective January 1, 2015, the ultimate controlling person in an insurer's holding company must identify and report material risk within the system that could pose enterprise risk to the insurer in an annual enterprise risk report filed with the OIR. The enterprise risk report will contain detailed information including the holding company's business plan, material developments concerning risk management, and rating agency information. Effective January 1, 2015, if an insurer fails to file a registration statement, a summary of the registration statement, or enterprise risk filing report within the specified time, it is a violation of this section. The section also provides criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.

Information contained in the enterprise risk report filed with OIR is confidential and exempt as provided in s. 624.4212, F.S., and are not subject to subpoena or discovery directly from the OIR. The bill also adds a provision that prohibits the waiver of any applicable privilege or claim

of confidentiality in the enterprise risk report because of disclosures to the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

Section 12 amends s. 628.803, F.S., relating to sanctions against an insurance holding company, to provide that a violation of s. 628.461, F.S., (i.e., the filing requirements for acquisition of controlling stock) or s. 628.801, F.S., (i.e., filing requirements for insurance holding companies) may serve as an independent basis for the OIR to disapprove dividends and distributions and place the insurer under an order of supervision pursuant to part VI of ch. 624, F.S. This provision is effective January 1, 2015.

Currently, the Insurance Code states that noncompliant insurance holding companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions that include:

- A penalty, not to exceed $10,000, for failing to file registration statements or certificate of exemption;
- Civil forfeitures, not to exceed $5,000 per violation, for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule; or
- A cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.

Additionally, an officer, director, or employee of an insurance holding company who willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR, is guilty of a felony of the third degree.

Sections 13 and 14 create ss. 628.804 and 628.805, F.S., which authorize the creation and participation by the OIR in a supervisory college with other state, federal, and international regulators charged with supervising an insurer or its affiliates, effective January 1, 2015. The bill provides the terms and conditions of participation. With respect to participation in a supervisory college, the OIR may clarify the membership and participation of other supervisors and clarify the role of other regulators, including the establishment of a groupwide supervisor.

The bill defines, the term, "groupwide supervisor," as the chief insurance regulator for the jurisdiction who is determined by the OIR to have significant contacts with the international insurance group sufficient to conduct and coordinate groupwide supervision activities. The OIR is authorized to adopt rules to implement criteria for determining the appropriate groupwide supervisor. This language, which was requested by the OIR, is supplemental to the NAIC model provision. It is consistent with a law recently enacted in Pennsylvania. In accordance with s. 624.4212, F.S., regarding confidential information sharing, the OIR is authorized to enter into cooperative agreements with other regulators. Insurers are liable for the payment of reasonable expenses for the OIR's participation in a supervisory college.

Property and Casualty Actuarial Opinion Model Law (Section 5)

The bill requires property and casualty insurers to file an annual Statement of Actuarial Opinion and Actuarial Opinion Summary in accordance with the NAIC annual statement instructions.

The section also updates the Financial Services Commission's (commission's) rulemaking authority under this section to specify that rules must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC. Life and health insurers are exempt from the specified reporting requirements of this section since they are governed by ss. 625.121 and 625.1212, F.S.

Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, F.S., which is created in a linked public records bill CS/SB 1300. This section also protects the summary and related information from subpoena or discovery directly from OIR. Parties seeking such information under a subpoena or other discovery tool must obtain it from the original custodian, not the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

Valuation of Life Insurance and Principle Based Reserves (Sections 6, 7, 8, and 9)

Standard Valuation Law for Life Insurers

Section 6 amends s. 625.121, F.S., relating to the Standard Valuation Law for life insurance, to provide that any memorandum or other material in support of the actuarial opinion that is currently confidential and exempt from s. 119.07(1), F.S., is not subject to subpoena or discovery directly from the OIR. Currently, authorized life insurance companies are required to submit an annual actuarial opinion of reserves, reflecting the valuation of reserve liabilities. This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared may testify in any private civil action concerning confidential information. These changes, in part, incorporate a provision of the NAIC Standard Valuation Law that provides that this information is not subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

The bill requires the implementation of the valuation manual and PBR for policies issued on or after the operative date of the valuation manual. Section 625.121, F.S., applies to policies and contracts issued prior to the operative date of the valuation manual.

Section 7 creates s. 625.1212, F.S., which is applicable to the valuation of policies and contracts issued on or after the operative date of the valuation manual with some exceptions. This include life insurance contracts, accident and health contracts, and deposit-type policies.[19] The operative date of the valuation manual is defined to mean the later of January 1, 2017, or the January 1 immediately following the July 1 that the Commissioner of the OIR certifies to the Financial Services Commission that the following conditions occurred on or before July 1:

- The valuation manual is adopted by the NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;

[19] According to the NAIC 2010 Standard Valuation Law, the term "deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

- The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, is enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements; and
- The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, has been enacted by at least 42 of the 55 jurisdictions.

The bill requires the OIR to value insurer reserves annually. The OIR may accept a valuation made by another insurance state supervisory official. Insurers are required to submit an actuarial opinion of reserves and memorandum to support each actuarial opinion on an annual basis. The bill provides minimum standard of valuation with exceptions. The OIR may require an insurer to change any assumption or method. The OIR may exempt specific product forms or product lines of a domestic company that is licensed and doing business in Florida from the minimum standards of valuation and the principal-based valuation requirements if certain conditions are met. The Financial Services Commission is authorized to adopt rules to implement s. 625.1212, F.S. Such rules are not subject to s. 120.541(3), F.S., which requires legislative ratification of agency rules having a private sector impact of more than $1 million over 5 years.

Section 8 provides that documents and other information created, produced, or obtained pursuant to ss. 625.121 and 625.1212, F.S., are privileged, confidential, and exempt as provided in s. 624.4212, F.S. CS/SB 1300, which creates s. 624.4212, F.S., is linked to this bill. These documents and other information are not subject to subpoena or discovery directly from the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared may be permitted or required to testify in any private civil action concerning such confidential and exempt information. In part, these changes incorporate a provision of the NAIC Standard Valuation Law which provides that the information is not subject to subpoena or discovery, and is not admissible in any civil action in either documentary or testimonial form.

Standard Nonforfeiture Law for Life Insurers

Section 9 provides for the application of the valuation manual for policies issued on or after the operative date of the manual. The bill provides technical conforming changes. The bill also addresses a potential federal income tax issue relating to life insurance contracts by establishing a 4 percent minimum interest rate. Currently, the interest rate per annum for any policy issued in a calendar year is equal to 125 percent of the calendar year statutory valuation interest for such policy as defined in the Standard Valuation Law. The 4 percent floor created by the bill is the annual effective rate used to determine the net single premium for purposes of cash-value accumulation test under Section 7702(b) of the IRC.[20] This provision codifies an amendment to

[20] 26 U.S.C. s. 7702(a) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either (1) satisfy the cash value accumulation test of s. 7702(b), or (2) both meet the guideline premium requirements of § 7702(c) and fall within the cash value corridor of s. 7702(d).

Standard Nonforfeiture Law for Life Insurance, which was adopted by the NAIC.[21] According to the NAIC, the establishment of this floor addresses a concern that the interest rate could decline below 4 percent, resulting in traditional life insurance being noncompliant with the maximum cash value requirements of the IRC Section 7702, and not qualify as a life insurance contract for federal income tax purposes.

Effective Date (Section 18)

Section 18 provides that except as otherwise expressly provided in the bill, the act will take effect October 1, 2014, if CS/SB 1300 or similar 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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers may incur an indeterminate amount of administrative costs associated with complying with the additional reporting requirements and implementing principle based reserves (PBR), and the OIR's participation in the supervisory colleges. The PBR requirements apply to policies issued on or after the operative date of the valuation manual.

Advocates of principle based reserves state that the method will reduce redundant reserves that are required pursuant to the current formulaic approach, thereby leading to lower prices for life insurance products, increasing consumer choices of products, and freeing up capital for insurers. Insurers will have the option to phase in the PBR requirements over 3 years after the valuation manual is effective, which would be no earlier than January 1, 2017, as provided in the bill.

[21] The NAIC Executive Committee adopted this change at the 2013 Fall NAIC Meeting.

C. Government Sector Impact:

The bill provides greater solvency tools and regulatory authority for the OIR. The supervisory college will provide greater coordination of efforts in the examination of multistate insurers and will reduce regulatory redundancies and expenses among the state regulators.

The OIR states there is no anticipated impact for fiscal year 2014-2015.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.10, 624.319, 624.402, 624.4085, 624.424, 625.121, 627.476, 628.461, 628.801, 628.803, 636.045, 641.225, and 641.255.

This bill creates the following sections of the Florida Statutes: 625.1212, 625.1214, 628.804, and 628.805.

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 Judiciary on March 25, 2014:
The committee substitute revises the procedures for litigants using subpoena or other discovery tools to obtain proprietary business information contained in actuarial opinions or other reports filed by law with the OIR. The litigants seeking such documents must obtain them from the original custodian or any subsequent custodian, not the OIR.

The committee substitute clarifies the two ways that a person or acquiring party may rebut a presumption of control in an insurer, which are filing a disclaimer-of-control form prescribed by OIR or a copy of a Schedule 13G filed with the Securities and Exchange Commission.

CS by Banking and Insurance on March 11, 2014:
The CS clarifies the process for rebutting a presumption of control and clarifies the definition of the term, "operative date." The CS also provides technical, conforming changes.

B. Amendments:

None.

By the Committees on Judiciary; and Banking and Insurance; and Senator Simmons

590-03147-14 20141308c2

A bill to be entitled

An act relating to insurer solvency; amending s. 624.10, F.S.; providing additional definitions applicable to the Florida Insurance Code; amending s. 624.319, F.S.; clarifying that production of documents does not waive the attorney-client or work-product privileges; amending s. 624.402, F.S.; conforming a cross-reference; amending s. 624.4085, F.S.; revising a definition; providing additional calculations for determining whether an insurer has a company action level event; revising provisions relating to mandatory control level events; amending s. 624.424, F.S.; requiring an insurer's annual statement to include an actuarial opinion summary; providing criteria for such summary; providing an exception for life and health insurers; updating provisions; requiring insurers reinsuring through a captive insurance company to file a report containing certain information; amending s. 625.121, F.S.; revising the Standard Valuation Law; distinguishing the provisions from valuations done pursuant to the National Association of Insurance Commissioner's (NAIC) valuation manual and incorporating certain provisions included in the manual; exempting certain documents from civil proceedings; revising the methods for evaluating the valuation of industrial life insurance policies; revising provisions relating to calculating additional premium; updating provisions relating to reserve calculations for indeterminate premium plans; creating

Florida Senate - 2014 CS for CS for SB 1308

590-03147-14 20141308c2

s. 625.1212, F.S.; providing for the valuation of policies and contracts after the adoption of the NAIC's valuation manual; providing applicability; defining terms; requiring the office to value insurer reserves; requiring actuarial opinions of the reserves and a supporting memorandum to the opinions; requiring the insurer to apply the standard prescribed in the valuation manual; providing exceptions; providing requirements for a principle-based valuation of reserves; requiring an insurer to submit certain data to the office; directing the Financial Services Commission to adopt rules; creating s. 625.1214, F.S.; providing for the use of confidential information; prohibiting the use of such information in private civil actions; amending s. 627.476, F.S.; revising the Standard Nonforfeiture Law; distinguishing provisions subject to the valuation manual and providing for the application of tables found in the manual; amending s. 628.461, F.S.; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company which a person is prohibited from acquiring unless certain requirements have been met; deleting a provision authorizing an insurer to file a disclaimer of affiliation and control in lieu of a letter notifying the Office of Insurance Regulation of the Financial Services Commission of the acquisition of the voting securities of a domestic stock company under certain circumstances; requiring the statement notifying the office to include additional

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

information; conforming a provision to changes made by the act; providing that control is presumed to exist under certain conditions; specifying how control may be rebutted and how a controlling interest may be divested; deleting definitions; amending s. 628.801, F.S.; requiring an insurer to annually file a registration statement by a specified date; revising the requirements and standards for the rules establishing the information and statement form for the registration; requiring an insurer to file an annual enterprise risk report; authorizing the office to conduct examinations to determine the financial condition of registrants; providing that failure to file a registration or report is a violation of the section; providing additional grounds, requirements, and conditions with respect to a waiver from the registration requirements; amending s. 628.803, F.S.; providing sanctions for persons who violate certain provisions relating to the acquisition of controlling stock; creating s. 628.804, F.S.; providing for the groupwide supervision of international insurance groups; defining terms; providing for the selection of a groupwide supervisor; authorizing the commission to adopt rules; creating s. 628.805, F.S.; authorizing the office to participate in supervisory colleges; authorizing the office to assess fees on insurers for participation; amending ss. 636.045 and 641.225, F.S.; applying certain statutes related to solvency to prepaid limited health service organizations and

health maintenance organizations; amending s. 641.255, F.S.; providing for applicability of specified provisions to a health maintenance organization that is a member of a holding company; providing effective dates and a contingent effective date.

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

Section 1. Section 624.10, Florida Statutes, is amended to read:

624.10 Other definitions ~~Transacting insurance~~.—As used in the Florida Insurance Code, the term:

(1) "Affiliate" means an entity that exercises control over or is directly or indirectly controlled by the insurer through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.

(2) "Affiliated person" of another person means:

(a) The spouse of the other person;

(b) The parents of the other person and their lineal descendants, or the parents of the other person's spouse and their lineal descendants;

(c) A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person;

(d) A person, 10 percent or more of whose outstanding voting securities are directly or indirectly owned or

controlled, or held with power to vote, by the other person;

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person;

(f) An officer, director, partner, copartner, or employee of the other person;

(g) If the other person is an investment company, an investment adviser of such company, or a member of an advisory board of such company;

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(i) A person who has entered into a written or unwritten agreement to act in concert with the other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of another person.

(4) "NAIC" means the National Association of Insurance Commissioners.

(5) "Transact" with respect to insurance includes any of

the following, in addition to other applicable provisions of this code:

(a) ~~(1)~~ Solicitation or inducement.

(b) ~~(2)~~ Preliminary negotiations.

(c) ~~(3)~~ Effectuation of a contract of insurance.

(d) ~~(4)~~ Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

Section 2. Subsection (2) of section 624.319, Florida Statutes, is amended to read:

624.319 Examination and investigation reports.—

(2) The examination report ~~when~~ so filed is ~~shall be~~ admissible in evidence in any action or proceeding brought by the department or office against the person examined, or against its officers, employees, or agents. In all other proceedings, the admissibility of the examination report is governed by the evidence code. The department or office or its examiners may ~~at any time~~ testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, regardless of whether ~~or not~~ a written report of the examination has been ~~either~~ made, furnished, or filed in the department or office. The production of documents during the course of an examination or investigation does not constitute a waiver of the attorney-client or work-product privileges.

Section 3. Paragraph (c) of subsection (8) of section 624.402, Florida Statutes, is amended to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8)

(c) Subject to the limitations provided in this subsection, services, including those listed in the definition of the term "transact" in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

Section 4. Paragraph (g) of subsection (1), paragraph (a) of subsection (3), and paragraph (b) of subsection (6) of section 624.4085, Florida Statutes, are amended to read:

624.4085 Risk-based capital requirements for insurers.—

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

(g) "Life and health insurer" means an ~~any~~ insurer authorized or eligible under the Florida Insurance Code to underwrite life or health insurance. The term includes a property and casualty insurer that writes accident and health insurance only. Effective January 1, 2015, the term also includes a health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries and a prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries.

(3)(a) A company action level event includes:

1. The filing of a risk-based capital report by an insurer which indicates that:

a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; ~~or~~

b. If a life and health insurer reports using the life and health annual statement instructions, the insurer has total adjusted capital that is greater than or equal to its company

action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0 ~~2.5~~, and has a negative trend;

c. Effective January 1, 2015, if a life and health or property and casualty insurer reports using the health annual statement instructions, the insurer or organization has total adjusted capital that is greater than or equal to its company action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting and Instructions, Health, updated annually by the NAIC; or

d. If a property and casualty insurer reports using the property and casualty annual statement instructions, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital, but less than the product of its authorized control level risk-based capital and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting and Instructions, Property/Casualty, updated annually by the NAIC;

2. The notification by the office to the insurer of an adjusted risk-based capital report that indicates an event in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7); or

3. If, under subsection (7), an insurer challenges an adjusted risk-based capital report that indicates an event in subparagraph 1., the notification by the office to the insurer that the office has, after a hearing, rejected the insurer's

challenge.

(6)

(b) If a mandatory control level event occurs:

1. With respect to a life and health insurer, the office shall, after due consideration of s. 624.408, and effective January 1, 2015, ss. 636.045 and 641.225, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631. A mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office may forego taking action for up to 90 days after the mandatory control level event if the office finds there is a reasonable expectation that the ~~mandatory control level~~ event may be eliminated within the 90-day period.

2. With respect to a property and casualty insurer, the office shall, after due consideration of s. 624.408, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631, or, in the case of an insurer that is not writing new business, may allow the insurer to continue to operate under the supervision of the office. In either case, the mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office may forego taking action for up to 90 days after the mandatory control level event if the office finds there is a reasonable expectation that the ~~mandatory control level~~ event may ~~will~~ be eliminated within the 90-day period.

Section 5. Subsection (1) and paragraph (e) of subsection (8) of section 624.424, Florida Statutes, are amended, and

subsection (11) is added to that section, to read:

624.424 Annual statement and other information.—

(1)(a) Each authorized insurer shall file with the office full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding calendar year shall be filed on or before March 1, and quarterly statements covering the periods ending on March 31, June 30, and September 30 shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing ~~of~~ an annual or quarterly statement. The statements must ~~shall~~ contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used ~~utilized~~ by insurers for financial statements, sworn to by at least two executive officers of the insurer or, if a reciprocal insurer, by ~~the~~ oath of the attorney in fact or its like officer if a corporation. To facilitate uniformity in financial statements and to facilitate office analysis, the commission may by rule adopt the form and instructions for financial statements approved by the NAIC in 2014 ~~National Association of Insurance Commissioners in 2002~~, and ~~may adopt~~ subsequent amendments thereto if the methodology remains substantially consistent, and may by rule require each insurer to submit to the office, or such organization as the office may designate, all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system specified by the office.

(b) Each insurer's annual statement must contain:

1. A statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or by a qualified loss reserve specialist, pursuant to ~~under~~ criteria established by rule of the commission. In adopting the rule, the commission shall ~~must~~ consider any criteria established by the NAIC ~~National Association of Insurance Commissioners~~. The office may require semiannual updates of the annual statement of opinion for ~~as to~~ a particular insurer if the office has reasonable cause to believe that such reserves are understated to the extent of materially misstating the financial position of the insurer. Workpapers in support of the statement of opinion must be provided to the office upon request. This paragraph does not apply to life insurance, health insurance, or title insurance.

2. An actuarial opinion summary written by the insurer's appointed actuary. The summary must be filed in accordance with the appropriate NAIC property and casualty annual statement instructions. Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, and the summary and related information are not subject to subpoena or discovery directly from the office. Neither the office nor any person who received documents, materials, or other information while acting under the authority of the office, or with whom such information is shared pursuant to s. 624.4212, may testify in a private civil action concerning such confidential information. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official duties of the department or office. No waiver of

any other applicable claim of confidentiality or privilege may occur as a result of a disclosure to the office under this section or any other section of the insurance code. This paragraph does not apply to life and health insurers subject to s. 625.121(3) before the operative date of the valuation manual as defined in s. 625.1212(2), and does not apply to life and health insurers subject to s. 625.1212(4) on or after such operative date.

(c) The commission may by rule require reports or filings required under the insurance code to be submitted by electronic means in a computer-readable form compatible with the electronic data processing equipment specified by the commission.

(8)

(e) The commission shall adopt rules to administer ~~implement~~ this subsection~~,~~ which ~~rules~~ must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation ~~1998 Model Rule requiring annual audited financial reports~~ adopted by the NAIC ~~National Association of Insurance Commissioners~~ or subsequent amendments, except where inconsistent with the requirements of this subsection. Any exception to, waiver of, or interpretation of accounting requirements of the commission must be in writing and signed by an authorized representative of the office. An ~~No~~ insurer may not raise an ~~as a defense in any action, any~~ exception to, waiver of, or interpretation of accounting requirements as a defense in an action, unless previously issued in writing by an authorized representative of the office.

(11) Each insurer doing business in this state which reinsures through a captive insurance company as defined in s.

628.901, but without regard to domiciliary status, shall, in conjunction with the annual financial statement required under paragraph (1)(a), file a report with the office containing financial information specific to reinsurance assumed by each captive.

(a) The report shall be filed as a separate schedule designed to avoid duplication of disclosures required by the NAIC's annual statement and instructions.

(b) Insurers must:

1. Identify the products ceded to the captive and whether the products are subject to rule 69O-164.020, Florida Administrative Code, the NAIC Valuation of Life Insurance Policies Regulation (Model #830), or the NAIC Actuarial Guideline XXXVIII (AG 38).

2. Disclose the assets of the captive in the format prescribed in the NAIC annual statement schedules.

3. Include a stand-alone actuarial opinion or certification identifying the differences between the assets the ceding company would be required to hold and the assets held by the captive.

Section 6. Subsection (2), paragraphs (a) and (b) of subsection (3), subsection (5), paragraph (e) of subsection (6), and subsections (10), (11), and (12) of section 625.121, Florida Statutes, are amended to read:

625.121 Standard Valuation Law; life insurance.—

(2) ANNUAL VALUATION.—The office shall annually value, or cause to be valued, the reserves ~~reserve liabilities, hereinafter called "reserves,"~~ for all outstanding life insurance policies and annuity and pure endowment contracts of

each ~~every~~ life insurer doing business in this state~~, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net-level premium method or others, used in the calculation of such reserves~~. In the case of an alien insurer, such valuation is ~~shall be~~ limited to its insurance transactions in the United States. In calculating ~~such~~ reserves, the office may use group methods and approximate averages for fractions of a year or otherwise, and~~. It~~ may accept ~~in its discretion~~ the insurer's calculation of such reserves. In lieu of the valuation of the reserves ~~herein~~ required of a ~~any~~ foreign or alien insurer, the office ~~it~~ may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction if the ~~when such~~ valuation complies with the minimum standard ~~herein~~ provided under this section ~~and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the office when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction~~. If a ~~When any such~~ valuation is made by the office, the office ~~it~~ may use its ~~the~~ actuary ~~of the office~~ or employ an actuary for that ~~the~~ purpose; and the reasonable compensation of the actuary, at a rate approved by the office, plus ~~and~~ reimbursement of travel expenses pursuant to s. 624.320 ~~upon demand by the office~~, supported by an itemized statement of such compensation and expenses, shall be paid by the insurer upon demand of the office. If ~~When~~ a domestic insurer furnishes

the office with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for that ~~the~~ purpose by the office, the valuation shall be verified by the actuary of the office without cost to the insurer. This section applies to the calculation of reserves for policies and contracts not subject to s. 625.1212.

(3) ACTUARIAL OPINION OF RESERVES.—

(a)~~1.~~ Each life insurer ~~insurance company~~ doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule are computed appropriately, are based on assumptions that ~~which~~ satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commission by rule shall define the specifics of this opinion and add any other items determined ~~to be~~ necessary to its scope.

1.~~2.~~ The opinion shall be submitted with the annual statement and must reflect ~~reflecting~~ the valuation of such reserve liabilities for each year ending on or before ~~after~~ December 31 of the year before the operative date of the valuation manual as defined in s. 625.1212(2), and in accordance with s. 625.1212(4) for each year thereafter~~, 1992~~.

2.~~3.~~ The opinion applies ~~shall apply~~ to all business in force, including individual and group health insurance plans, in the form and substance acceptable to the office as specified by rule of the commission.

3.~~4.~~ The commission may adopt rules providing the standards of the actuarial opinion consistent with standards adopted by

the Actuarial Standards Board on December 31, 2013 ~~2002~~, and subsequent revisions thereto if~~, provided that~~ the standards remain substantially consistent.

4.~~5. In the case of an opinion required to be submitted by a foreign or alien company,~~ The office may accept an ~~the~~ opinion filed by a foreign or alien insurer ~~that company~~ with the insurance supervisory official of another state if the office determines that the opinion reasonably meets the requirements applicable to an insurer ~~a company~~ domiciled in this state.

5.~~6.~~ As used in ~~For the purposes of~~ this subsection, the term "qualified actuary" means a member in good standing of the American Academy of Actuaries who also meets the requirements specified by rule of the commission.

6.~~7.~~ Disciplinary action by the office against the insurer ~~company~~ or the qualified actuary shall be in accordance with the insurance code and related rules adopted by the commission.

7.~~8.~~ A memorandum in the form and substance specified by rule shall be prepared to support each actuarial opinion.

8.~~9.~~ If the insurer ~~insurance company~~ fails to provide a supporting memorandum at the request of the office within a period specified by rule of the commission, or if the office determines that the supporting memorandum provided by the insurer ~~insurance company~~ fails to meet the standards prescribed by rule of the commission, the office may engage a qualified actuary at the expense of the insurer ~~company~~ to review the opinion and the basis for the opinion and prepare such supporting memorandum as ~~is~~ required by the office.

9.~~10.~~ Except as otherwise provided in this subparagraph ~~paragraph~~, any memorandum or other material in support of the

opinion is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and is not subject to subpoena or discovery directly from the office; however, the memorandum or other material may be released by the office with the written consent of the insurer ~~company~~, or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the office for preserving the confidentiality of the memorandum or other material. If any portion of the confidential memorandum is cited by the insurer ~~company~~ in its marketing, ~~or~~ is cited before any governmental agency other than a state insurance department, or is released by the insurer ~~company~~ to the news media, no portion of the memorandum is confidential. Neither the office nor any person who receives documents, materials, or other information while acting under the authority of the office or with whom such information is shared pursuant to this paragraph may testify in a private civil action concerning the confidential documents, materials, or information. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official duties of the department or office. A waiver of an applicable privilege or claim of confidentiality in the documents, materials, or information may not occur as a result of disclosure to the office under this section or any other section of the insurance code, or as a result of sharing as authorized under s. 624.4212.

(b) In addition to the opinion required by paragraph (a) ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,

require an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule, when considered in light of the assets held by the insurer ~~company~~ with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's ~~company's~~ obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts.

(5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF THE STANDARD NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h) and subsections (6), (13) ~~(11)~~, and (14), the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of s. 627.476 ~~(Standard Nonforfeiture Law for Life Insurance)~~ shall be the commissioners' reserve valuation method defined in subsections (7), (11), and (14); 5 percent interest for group annuity and pure endowment contracts and 3.5 percent interest for all other such policies and contracts, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4 percent interest for such policies issued prior to October 1, 1979, and 4.5 percent interest for such policies issued on or after October 1, 1979; and the following tables:

(a) For all ordinary policies of life insurance issued on

the standard basis, excluding any disability and accidental death benefits in such policies:

1. For policies issued before ~~prior to~~ the operative date of s. 627.476(9), the ~~commissioners'~~ 1958 Commissioners Standard Ordinary (CSO) Mortality Table; except that, for any category of such policies issued on female risks, modified net premiums and present values, referred to in subsection (7), may be calculated according to an age up to ~~not more than~~ 6 years younger than the actual age of the insured.

2. For policies issued on or after the operative date of s. 627.476(9), the ~~commissioners'~~ 1980 Commissioners Standard Ordinary Mortality Table or, at the election of the insurer for any one or more specified plans of life insurance, the ~~commissioners'~~ 1980 Commissioners Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors.

3. For policies issued on or after July 1, 2004, ordinary mortality tables, adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies:

1. For policies issued before ~~prior to~~ the first date ~~to which~~ the ~~commissioners'~~ 1961 Commissioners Standard Industrial Mortality Table is applicable according to s. 627.476, the 1941 Standard Industrial Mortality Table; ~~and~~

2. For ~~such~~ policies issued on or after that date, the ~~commissioners'~~ 1961 Commissioners Standard Industrial Mortality

Table; and

3. For policies issued on or after October 1, 2014, a Commissioners Standard Industrial Mortality Table adopted by the NAIC after 1980 which is adopted by rule of the commission for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of ~~either of~~ these tables approved by the office.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951; any modification of such table approved by the office; or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts:

1. For policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit;

2. For policies or contracts issued on or after January 1, 1961, and before ~~prior to~~ January 1, 1966, either of the tables specified in subparagraph 1. ~~those tables~~ or, at the option of the insurer, the class three disability table (1926);

3. For policies issued before ~~prior to~~ January 1, 1961, the class three disability table (1926); and

4. For policies or contracts issued on or after July 1, 2004, tables of disablement rates and termination rates adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies or contracts.

Any such table for active lives shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies:

1. For policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table;

2. For policies issued on or after January 1, 1961, and before ~~prior to~~ January 1, 1966, the 1959 Accidental Death Benefits ~~either that~~ Table or, at the option of the insurer, the Intercompany Double Indemnity Mortality Table;

3. For policies issued before ~~prior to~~ January 1, 1961, the Intercompany Double Indemnity Mortality Table; and

4. For policies issued on or after July 1, 2004, tables of accidental death benefits adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies.

Either table shall be combined with a mortality table permitted

for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis, and other special benefits, such tables as may be approved by the office as being sufficient with relation to the benefits provided by such policies.

(h) Except as provided in subsection (6), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the commissioners' reserve valuation method defined in subsection (7) and the following tables and interest rates:

1. For individual annuity and pure endowment contracts issued before ~~prior to~~ October 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office, and 6 percent interest for single-premium immediate annuity contracts and 4 percent interest for all other individual annuity and pure endowment contracts.

2. For individual single-premium immediate annuity contracts issued on or after October 1, 1979, and before ~~prior to~~ October 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office, and 7.5 percent interest. For such contracts issued on or after October 1, 1986, the 1983 Individual Annual Mortality Table, or any modification of such table approved by the office, and the applicable calendar year statutory valuation

interest rate as described in subsection (6).

3. For individual annuity and pure endowment contracts issued on or after October 1, 1979, and before ~~prior to~~ October 1, 1986, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office, and 5.5 percent interest for single-premium deferred annuity and pure endowment contracts and 4.5 percent interest for all other such individual annuity and pure endowment contracts. For such contracts issued on or after October 1, 1986, the 1983 Individual Annual Mortality Table, or any modification of such table approved by the office, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

4. For all annuities and pure endowments purchased before ~~prior to~~ October 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the office, and 6 percent interest.

5. For all annuities and pure endowments purchased on or after October 1, 1979, and before ~~prior to~~ October 1, 1986, under group annuity and pure endowment contracts, excluding ~~any~~ disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the office, and 7.5 percent interest. For such contracts purchased on or after October 1, 1986, the 1983 Group Annuity Mortality Table, or any

modification of such table approved by the office, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

After July 1, 1973, an ~~any~~ insurer may have filed with the former Department of Insurance a written notice of its election to comply with ~~the provisions of~~ this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such insurer. However, an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer does not make ~~makes no~~ such election, the operative date of this paragraph for such insurer is ~~shall be~~ January 1, 1979.

(i) In lieu of the mortality tables specified in this subsection, and subject to rules previously adopted by the former Department of Insurance, the insurance company may, at its option:

1. Substitute the applicable 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET mortality table standard, for policies issued on or after the operative date of s. 627.476(9) and before January 1, 1989.

2. Substitute the applicable 1980 CSO or CET Smoker and Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET mortality table standard.~~,~~

3. Use the Annuity 2000 Mortality Table for determining the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after January 1, 1998, and before July 1, 1998.

4. Use the 1994 GAR Table for determining the minimum standard of valuation for annuities and pure endowments purchased on or after January 1, 1998, and before July 1, 1998, under group annuity and pure endowment contracts.

(j) The commission may adopt by rule the model regulation for valuation of life insurance policies as approved by the NAIC ~~National Association of Insurance Commissioners~~ in March 1999, including tables of select mortality factors, and may make the regulation effective for policies issued on or after January 1, 2000.

(k) For individual annuity and pure endowment contracts issued on or after July 1, 2004, excluding ~~any~~ disability and accidental death benefits purchased under those contracts, individual annuity mortality tables adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(l) For all annuities and pure endowments purchased on or after July 1, 2004, under group annuity and pure endowment contracts, excluding ~~any~~ disability and accidental death benefits purchased under those contracts, group annuity mortality tables adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(6) MINIMUM STANDARD OF VALUATION.—

(e) The interest rate index shall be the Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., if the ~~as long as this~~ index is

calculated by using substantially the same methodology ~~as~~ used by Moody's ~~it~~ on January 1, 1981. If Moody's corporate bond yield average ceases to be calculated in substantially the same ~~this~~ manner, the interest rate index shall be the index specified in the valuation manual, as applicable, as provided under s. 625.1212, or an index adopted by the NAIC and approved by rule adopted ~~promulgated~~ by the commission. The methodology used in determining the index approved by rule must ~~shall~~ be substantially the same as the methodology employed on January 1, 1981, for determining Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc.

(10) LOWER VALUATIONS.—An insurer that ~~which at any time had~~ adopted a ~~any~~ standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard ~~herein~~ provided under this section shall ~~may~~, with the approval of the office, adopt a ~~any~~ lower standard of valuation, but not lower than the minimum herein provided; however, for the purposes of this subsection, the holding of additional reserves previously determined by an appointed ~~a qualified~~ actuary, as defined in s. 625.1212(2), to be necessary to render the opinion required by subsection (3) may ~~shall~~ not be deemed to be the adoption of a higher standard of valuation.

(11) ADDITIONAL PREMIUM ~~DEFICIENCY RESERVE~~.—If in any contract year the gross premium charged by a ~~any~~ life insurer on a ~~any~~ policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum premium

reserve required for the policy or contract shall be the greater of the reserve calculated according to the actual mortality table, rate of interest, and method used for the policy or contract, or the actual method used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest are those standards ~~there shall be maintained on such policy or contract a deficiency reserve in addition to the reserve~~ defined by subsections (4), (5), and (6) ~~(7) and (12)~~. ~~For each such policy or contract, the deficiency reserve shall be the present value, according to the minimum valuation standards of mortality and rate of interest, of the differences between all such valuation net premiums and the corresponding premiums charged for such policy or contract during the remainder of the premium-paying period. For any category of policies, contracts, or benefits specified in subsections (5) and (6), issued on or after the operative date of s. 627.476 (the Standard Nonforfeiture Law for Life Insurance), the aggregate deficiency reserves may be reduced by the amount, if any, by which the aggregate reserves actually calculated in accordance with subsection (9) exceed the minimum aggregate reserves prescribed by subsection (8). The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (5) and (6). However,~~ For any life insurance policy that ~~which~~ is issued on or after January 1, 1985, for which the gross premium in the first policy year

exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess, and which provides an endowment benefit, a cash surrender value, or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (7), the provisions of subparagraph (7)(a)2. being ignored. The minimum premium reserve amount ~~of the deficiency reserve~~, if any, at each policy anniversary of such a policy is ~~shall be~~ the excess, if any, of the amount determined by the foregoing provisions of this subsection plus the reserve calculated by the method described in subsection (7), the provisions of subparagraph (7)(a)2. being ignored, over the reserve actually calculated by the method described in subsection (7), the provisions of subparagraph (7)(a)2. being taken into account.

(12) RESERVE CALCULATION FOR INDETERMINATE PREMIUM PLANS ~~ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN CASES~~.—In the case of a ~~any~~ plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of a ~~any~~ plan of life insurance or annuity for which ~~is of such a nature that~~ the minimum reserves cannot be determined by the methods described in subsections (7) and (11) ~~subsection (7)~~, the reserves that ~~which~~ are held under ~~any~~ such plan must ~~shall~~:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) Be computed by a method that ~~which~~ is consistent with the principles of this section, as determined by rules adopted ~~promulgated~~ by the commission.

Section 7. Section 625.1212, Florida Statutes, is created to read:

625.1212 Valuation of policies and contracts issued on or after the operative date of the valuation manual.—

(1) APPLICABILITY.—This section applies to life insurance contracts, accident and health insurance contracts, and deposit-type contracts issued on or after the operative date of the valuation manual unless the manual requires or permits an insurer to determine reserves according to the standards in effect before the operative date of the manual and rules adopted by the commission as provided under s. 625.121. Subsections (5) and (6) do not apply to policies and contracts subject to s. 625.121.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Accident and health insurance" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(b) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (4).

(c) "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(d) "Insurer" means a person engaged as an indemnitor, surety, or contractor in the business of entering into contracts

of insurance or reinsurance.

(e) "Life insurance" means policies or contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(f) "Operative date of the valuation manual" means the later of January 1, 2017, or the January 1 immediately following the July 1 that the Commissioner of the Office of Insurance Regulation certifies to the Financial Services Commission in writing that the following conditions occurred on or before July 1:

1. The valuation manual is adopted by the NAIC by an affirmative vote of at least 42 members of the NAIC or 75 percent of members voting, whichever is greater;

2. The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, is enacted in states representing more than 75 percent of the direct premiums written as reported in the 2008 annual statements for life, accident and health, health, or fraternal society insurance; and

3. The Standard Valuation Law as amended by the NAIC in 2009, or substantially similar legislation, is enacted in at least 42 of the following 55 jurisdictions: the 50 states of the United States, the District of Columbia, American Samoa, the American Virgin Islands, Guam, and Puerto Rico.

(g) "Policyholder behavior" means an action a policyholder, contract holder, or other person who has the right to elect options, such as a certificateholder, may take under a policy or contract subject to this section including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or

contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(h) "Principle-based valuation" means a reserve valuation that uses one or more methods or assumptions determined by the insurer and must comply with subsection (6) as specified in the valuation manual.

(i) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(j) "Tail risk" means a risk that occurs when the frequency of low probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude.

(k) "Valuation manual" means the manual of valuation instructions adopted by the NAIC, or as subsequently amended.

(3) RESERVE VALUATION.—The office shall annually value, or cause to be valued, insurer reserves for all outstanding life insurance contracts, accident and health contracts, and deposit-type contracts in this state. Insurers are subject to subsections (5) and (6) when calculating the reserves. In lieu of the reserve valuation for a foreign or alien insurer, the office may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction if the valuation complies with the minimum standard required in this section.

(4) ACTUARIAL OPINION OF RESERVES.—

(a) Each insurer that has outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state which are subject to regulation by the office must annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable state law. The specifics of the opinion, including any items deemed necessary to its scope, must be as prescribed by the valuation manual.

(b) Except as exempted in the valuation manual, each insurer that has outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state shall also annually include an opinion by the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(c) The insurer shall prepare a memorandum to support each actuarial opinion in such form and substance as specified in the

valuation manual and acceptable to the office. If the insurer fails to provide a supporting memorandum within the period specified in the valuation manual, or if the office determines that the supporting memorandum fails to meet the standards required by the manual or is otherwise unacceptable to the office, the office may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare the supporting memorandum.

(d) Each opinion subject to this subsection must be submitted with the annual statement in such form and substance as specified in the valuation manual and acceptable to the office, must reflect the valuation of the reserve liabilities for each year ending on or after the operative date of the valuation manual, and must apply to all policies and contracts subject to paragraph (b), plus other actuarial liabilities as may be specified in the valuation manual. The opinion must be based on standards adopted by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual. For a foreign or alien insurer, the office may accept an opinion filed by the insurer with the insurance supervisory official of another state if the office determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.

(e) Disciplinary action by the office against the insurer or the appointed actuary shall be in accordance with the laws of this state and related rules adopted by the commission.

(5) MINIMUM STANDARD OF VALUATION.—

(a) In accordance with this subsection and subsection (6), an insurer must apply the standard prescribed in the valuation

manual as the minimum standard of valuation for contracts issued on or after the operative date of the valuation manual, except:

1. For specific product forms or product lines exempted pursuant to paragraph (f); or

2. That an insurer domiciled in a state that does not require the insurer to apply the standards prescribed in the valuation manual as the minimum standard of valuation, including the principle-based valuation of reserves, may not apply such standards in this state.

(b) If, in the opinion of the office, there is no specific valuation requirement or a specific valuation requirement in the valuation manual is not in compliance with this section, the insurer shall comply with the minimum valuation standards prescribed by the commission by rule.

(c) The office may engage a qualified actuary, at the insurer's expense, to perform an actuarial examination of the insurer and to render an opinion as to the appropriateness of any reserve assumption or method, or computer model or modeling software used by the insurer, or to review and provide an opinion on the insurer's compliance with the requirements of this section. In calculating and establishing reserves under this section, the insurer may rely on the modeling software and tools of a third-party vendor only if the vendor contractually agrees to allow the insurer to provide the office with access to the software or tools as necessary to replicate the results of the software or tools for the purpose of evaluating and validating reserve valuations. The office may rely upon the opinion of a qualified actuary employed by or under contract with the commissioner of another state, district, or territory

of the United States with respect to this section.

(d) The office may require an insurer to change any assumption or method that, in the opinion of the office, is necessary to comply with the valuation manual or this section. The insurer shall adjust the reserves as required by the office. The office may take other disciplinary action pursuant to applicable state law and rules.

(e) The commission may adopt subsequent amendments to the valuation manual by rule if the methodology and standards remain substantially consistent with the valuation manual then in effect.

(f) A domestic insurer licensed and doing business only in this state may exempt specific product forms or product lines from the requirements of this subsection and subsection (6) if the insurer computes reserves for the specific product forms or product lines using assumptions and methods used before the operative date of the valuation manual, and the amount of insurance subject to the stochastic or deterministic reserve requirement is immaterial. The requirements of s. 625.121 apply to specific product forms and product lines exempted under this paragraph.

(g) An insurer that adopted a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this section may, with the approval of the office, adopt a lower standard of valuation, but such standard may not be lower than the minimum provided in this subsection. For purposes of this subsection, holding additional reserves previously determined by an appointed actuary to be necessary to render the opinion required

by subsection (3) may not be deemed to be the adoption of a higher standard of valuation.

(6) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION OF RESERVES.—

(a) Insurers required to use a principle-based valuation of reserves for specified product forms and product lines and associated policies and contracts, pursuant to subparagraph (5)(a)2., must:

1. Quantify the benefits and guarantees, and the funding associated with the policies or contracts and their risks at a level of conservatism that reflects conditions that:

a. Include unfavorable events that have a reasonable probability of occurring during the lifetime of the policies or contracts; and

b. Are appropriately adverse to quantifying the tail risk.

2. Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those used within the insurer's overall risk assessment process while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

3. Incorporate assumptions that are derived in one of the following manners:

a. The assumption is prescribed in the valuation manual.

b. For assumptions that are not prescribed, the assumptions must:

(I) Be established using the insurer's available experience, to the extent that it is relevant and statistically credible; or

(II) To the extent that insurer data is not available, relevant, or statistically credible, be established using other relevant, statistically credible experience.

4. Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(b) An insurer using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

1. Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those prescribed in the valuation manual.

2. Submit an annual certification to the office and the insurer's board of directors of the effectiveness of internal controls on the principle-based valuation. The internal controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on controls in place as of the end of the preceding calendar year.

3. Upon request, develop and file with the office a principle-based valuation report that complies with standards prescribed in the valuation manual.

(c) A principle-based valuation may include a prescribed formulaic reserve component.

(7) EXPERIENCE REPORTING.—An insurer subject to the requirements of paragraph (5)(d) shall submit mortality, morbidity, policyholder behavior, or expense experience and

other data as prescribed in the valuation manual to the office.

(8) RULE ADOPTION.—The commission may adopt rules as necessary to administer this section, including rules requiring the use of the NAIC 2009 Standard Valuation Law and the NAIC 2012 Valuation Manual. The adoption of such rules is not subject to s. 120.541(3), and the rules do not take effect until the operative date of the valuation manual.

Section 8. Section 625.1214, Florida Statutes, is created to read:

625.1214 Use of confidential information.—

(1) Documents, reports, materials, and other information created, produced, or obtained pursuant to ss. 625.121 and 625.1212 are privileged, confidential, and exempt as provided in s. 624.4212, and are not subject to subpoena or discovery directly from the office. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official duties of the department or office. A waiver of any other applicable claim of confidentiality or privilege may not occur as a result of a disclosure to the office under this section, any other section of the insurance code, or as a result of sharing under s. 624.4212.

(2) Neither the office nor any person who received confidential and exempt information while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 may be permitted or required to testify in a private civil action concerning any confidential and exempt information subject to s. 624.4212. If any portion of the confidential memorandum is cited by the insurer in its

marketing, is cited before a governmental agency other than a state insurance department, or is released by the insurer to the news media, no portion of the memorandum is confidential.

(3) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under subsection (1) shall be available and enforced in any proceeding in and in any court of this state.

Section 9. Paragraphs (h) and (i) of subsection (9) and subsection (14) of section 627.476, Florida Statutes, are amended to read:

627.476 Standard Nonforfeiture Law for Life Insurance.—

(9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—

(h) All adjusted premiums and present values referred to in this section shall, for all policies of ordinary insurance be calculated on the basis of the ~~Commissioners'~~ 1980 Standard Ordinary Mortality Table adopted by the NAIC or, at the election of the insurer for any one or more specified plans of life insurance, the ~~Commissioners'~~ 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors adopted by the NAIC; ~~shall~~ for all policies of industrial insurance be calculated on the basis of the ~~Commissioners'~~ 1961 Standard Industrial Mortality Table adopted by the NAIC; and ~~shall~~ for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. However:

1. At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the

basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

2. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether ~~or not~~ required by subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

3. An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

4. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the ~~Commissioners'~~ 1980 Extended Term Insurance Table adopted by the NAIC for policies of ordinary insurance and not more than the ~~Commissioners'~~ 1961 Industrial Extended Term Insurance Table adopted by the NAIC for policies of industrial insurance.

5. In lieu of the mortality tables specified in this section, at the option of the insurance company and subject to rules adopted by the commission, the insurance company may substitute:

a. The 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection and before January 1,

1989;

b. The 1980 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection;

c. A mortality table that is a blend of the sex-distinct 1980 CSO or CET mortality table standard, whichever is applicable, or a mortality table that is a blend of the sex-distinct 1980 CSO or CET smoker and nonsmoker mortality table standards, whichever is applicable, for policies that are subject to the United States Supreme Court decision in *Arizona Governing Committee v. Norris* to prevent unfair discrimination in employment situations.

6. For policies issued:

a. Before the operative date of the valuation manual, ordinary mortality tables, adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum nonforfeiture standard may be substituted for the ~~Commissioners'~~ 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or ~~for~~ the ~~Commissioners'~~ 1980 Extended Term Insurance Table adopted by the NAIC.

b. On or after the operative date of the valuation manual, the valuation manual shall provide the Standard Mortality Table for use in determining the minimum nonforfeiture standard that may be substituted for:

(I) The 1980 Standard Ordinary Mortality Table with or without 10-Year Select Mortality Factors or the 1980 Extended Term Insurance Table adopted by the NAIC. If the commission approves by rule a Standard Ordinary Mortality Table adopted by

the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(II) The 1961 Standard Industrial Mortality Table or 1961 Industrial Extended Term Insurance Table adopted by the NAIC. If the commission approves by rule any Standard Industrial Mortality Table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

7. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(i) The nonforfeiture interest rate per year for a ~~any~~ policy issued in a particular calendar year for policies issued:

1. Before the operative date of the valuation manual, shall be equal to 125 percent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearest one-fourth of 1 percent; however, the nonforfeiture interest rate may not be less than 4 percent.

2. On or after the operative date of the valuation manual, shall be as provided by the valuation manual.

(14) OPERATIVE DATE.—

(a) After the effective date of this code, an ~~any~~ insurer

may file with the office a written notice or notices of its election to comply with ~~the provisions of~~ this section on and after a specified date or dates before January 1, 1966, as to either or both of its policies of ordinary and industrial insurance, in which case such specified date or dates shall be the operative date of this section with respect to such policies. The operative date of this section for policies of both ordinary and industrial insurance shall be the earlier of January 1, 1966, and any prior operative date or dates resulting from such previously filed written notices. With respect to policies of industrial insurance issued on and after the operative date of this section for such policies but before January 1, 1968, any insurer may file with the office written notice of its election to have the ~~Commissioners'~~ 1961 Standard Industrial Mortality Table and ~~the Commissioners'~~ 1961 Industrial Extended Term Insurance Table adopted by the NAIC applicable with respect to subsection (8) for policies issued on and after the date specified in such election.

(b) As used in subsection (9), the term "operative date of the valuation manual" has the same meaning as provided in s. 625.1212(2).

Section 10. Subsections (1), (3), (10), (12), and (13) of section 628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with any affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting

securities of a domestic stock insurer or of a controlling company, unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed, or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office the ~~a~~ statement as specified in subsection (3). The statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities, if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer, or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material~~

~~relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing ~~as~~ required under this subsection must be made for ~~as to~~ any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company must ~~shall~~ contain all the following information and any additional information that ~~as~~ the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who controls, ~~either~~ directly or indirectly, the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person

performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.~~;~~

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.~~;~~

(c) Any plans or proposals that ~~which~~ such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals that ~~which~~ such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management.~~;~~

(d) The number of shares or other securities that ~~which~~ the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.~~; and~~

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(f) Effective January 1, 2015, an agreement by the person required to file the statement that the person will provide the annual report specified in s. 628.801(2) if control exists.

(g) Effective January 1, 2015, an acknowledgement by the

person required to file the statement that the person and all subsidiaries within the person's control in the insurance holding company system will provide, as necessary, information to the office upon request to evaluate enterprise risk to the insurer.

(10) Upon notification to the office by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 10 ~~5~~ percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with the provisions of this section, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

(12)(a) A person may rebut a presumption of control by

filing a disclaimer of control with the office on a form prescribed by the office. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to rules 13d-1(b) or 13d-1(c) under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless the office disallows the disclaimer.

(b) A controlling person of a domestic insurer who seeks to divest the person's controlling interest in the domestic insurer in any manner shall file with the office, with a copy provided to the insurer, confidential notice, not subject to public inspection as provided under s. 624.4212, of the person's proposed divestiture at least 30 days before the cessation of control. The office shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer must file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the office, in its discretion, determines that confidential treatment interferes with enforcement of this section. If the statement referred to in subsection (1) is otherwise filed, this paragraph does not apply ~~For the purpose of this section, the term "affiliated person" of another person means:~~

~~1. The spouse of such other person;~~

~~2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;~~

~~3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;~~

~~4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;~~

~~5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;~~

~~6. Any officer, director, partner, copartner, or employee of such other person;~~

~~7. If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;~~

~~8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or~~

~~9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company~~.

~~(b) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.~~

(13) The commission may adopt~~, amend, or repeal~~ rules that

are necessary to administer ~~implement the provisions of~~ this section~~, pursuant to chapter 120~~.

Section 11. Section 628.801, Florida Statutes, is amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An ~~Every~~ insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule ~~or statute~~. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for ~~a~~ foreign insurers ~~insurer~~ domiciled in states that are currently accredited by the NAIC ~~National Association of Insurance Commissioners by December 31, 1995~~. Except to the extent of any conflict with this code, the rules must include all requirements and standards of ss. 4 and 5 of the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC ~~National Association of Insurance Commissioners~~, as adopted in December 2010. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules ~~Regulatory Act and the Model Regulation existed on November 30, 2001, and~~ may include a prohibition on oral contracts between affiliated entities. Material transactions

between an insurer and its affiliates shall be filed with the office as provided by rule ~~Upon request, the office may waive filing requirements under this section for a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the National Association of Insurance Commissioners~~.

(2) Effective January 1, 2015, the ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report, to the best of the ultimate controlling person's knowledge and belief, must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial

condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(3) Effective January 1, 2015, pursuant to chapter 624 relating to the examination of insurers, the office may examine any insurer registered under this section and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(4) The filings and related documents filed pursuant to this section are confidential and exempt as provided in s. 624.4212 and are not subject to subpoena or discovery directly from the office. A waiver of any applicable privilege or claim of confidentiality in the filings and related documents may not occur as a result of any disclosure to the office under this section or any other section of the insurance code as authorized under s. 624.4212. Neither the office nor any person who received the filings and related documents while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to s. 624.4212. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official

duties of the department or office.

(5) Effective January 1, 2015, the failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

(6) Upon request, the office may waive the filing requirements of this section:

(a) If the insurer is a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the NAIC; or

(b) If the insurer is a domestic insurer that writes only in this state and has annual direct written and assumed premium of less than $300 million, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, and demonstrates that compliance with this section would not provide substantial regulatory or consumer benefit. In evaluating a waiver request made under this paragraph, the office may consider various factors including, but not limited to, the type of business entity, the volume of business written, the ownership or organizational structure of the entity, or whether the company is in run-off.

A waiver granted pursuant to this subsection is valid for 2 years unless sooner withdrawn due to a change in the circumstances under which the waiver was granted.

Section 12. Effective January 1, 2015, present subsection (4) of section 628.803, Florida Statutes, is renumbered as

subsection (5), and a new subsection (4) is added to that section, to read:

628.803 Sanctions.—

(4) If the office determines that any person violated s. 628.461 or s. 628.801, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

Section 13. Effective January 1, 2015, section 628.804, Florida Statutes, is created to read:

628.804 Groupwide supervision for international insurance groups.—

(1) As used in this section:

(a) "Groupwide supervisor" means the chief insurance regulatory official for the jurisdiction who is determined by the office to have significant contacts with the international insurance group sufficient to conduct and coordinate groupwide supervision activities.

(b) "International insurance group" means an insurance group operating internationally which includes an insurer.

(2) The office may act as the groupwide supervisor for an international insurance group in which the ultimate controlling person of the group is domiciled in this state.

(3)(a) If the ultimate controlling person is domiciled outside this state, the office, in cooperation with other groupwide supervisors, may:

1. Determine that the office is the appropriate groupwide supervisor for an international insurance group with substantial operations concentrated in this state or in insurance operations

conducted by subsidiary insurance companies domiciled in this state; or

2. Acknowledge that another chief insurance regulatory official is the appropriate groupwide supervisor for the international insurance group.

(b) Before issuing a determination, the office must notify the insurer and the ultimate controlling person within the international insurance group and provide the international insurance group with at least 30 days to submit information pertinent to the pending determination.

(4) The commission may adopt rules to administer this section, including rules establishing the criteria for making a determination under paragraph (3)(a), such as the extent of insurance operations in this state and nation; the location of the executive offices, assets and liabilities, and business operations of the international insurance group; the domicile of the ultimate controlling person of the international insurance group; and the similarity of the regulatory systems of other jurisdictions acting or seeking to act as lead groupwide supervisor.

Section 14. Effective January 1, 2015, section 628.805, Florida Statutes, is created to read:

628.805 Supervisory colleges.—In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with ss. 624.316 and 628.801, the office may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates,

including other state, federal, and international regulatory agencies. In accordance with s. 624.4212 regarding confidential information sharing, the office may enter into agreements that provide the basis for cooperation between the office and the other regulatory agencies and the activities of the supervisory college. This section does not delegate to the supervisory college the office's authority to regulate or supervise the insurer or its affiliates under its jurisdiction.

(1) With respect to participation in a supervisory college, the office may:

(a) Initiate the establishment of a supervisory college.

(b) Clarify the membership and participation of other supervisors in the supervisory college.

(c) Clarify the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor.

(d) Coordinate the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.

(e) Establish a crisis management plan.

(2) With respect to an insurer registered under s. 628.801, and in accordance with this section, the office may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system that has international operations in order to determine the insurer's compliance with this chapter.

(3) Each registered insurer subject to this section is liable for and shall pay reasonable expenses for the office's participation in a supervisory college, including reasonable

travel expenses. A supervisory college may be convened as a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the office may impose a regular assessment on the insurer for the payment of these expenses.

Section 15. Effective January 1, 2015, subsection (3) is added to section 636.045, Florida Statutes, to read:

636.045 Minimum surplus requirements.—

(3) A prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries is subject to ss. 624.4085 and 624.40851.

Section 16. Effective January 1, 2015, subsection (7) is added to section 641.225, Florida Statutes, to read:

641.225 Surplus requirements.—

(7) A health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries is subject to ss. 624.4085 and 624.40851.

Section 17. Effective January 1, 2015, subsection (3) is added to section 641.255, Florida Statutes, to read:

641.255 Acquisition, merger, or consolidation.—

(3) A health maintenance organization that is a member of a holding company system is subject to s. 628.461 but not s. 628.4615.

Section 18. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2014, if SB 1300 or similar legislation is adopted in the same legislative session or an extension 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)

4-9-14
Meeting Date

Topic INSURER SOLVENCY

Bill Number 1308 *(if applicable)*

Name MONTE STEVENS

Amendment Barcode *(if applicable)*

Job Title DEPUTY CHIEF OF STAFF

Address 200 E. GAINES ST
Street

Phone 850-413-5005

TALLY FL 32301
City *State* *Zip*

E-mail monte.stevens@flofr.com

Speaking: ☑ For ☐ Against ☐ Information

Representing OIR

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)

4.9.14
Meeting Date

Topic Solvency — Bill Number 1308 *(if applicable)*

Name Ashley Mayer — Amendment Barcode _____ *(if applicable)*

Job Title Lobbyist

Address 101 E. College St — Phone 222.9075
Street

Tallahassee — E-mail _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

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)

4/9/2014
Meeting Date

Topic _____ Bill Number 1308 *(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

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 1698
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	Ratification of Rules of the Office of Insurance Regulation
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Knudson	Knudson		**BI SPB 7110 as introduced**
1.	Knudson	Phelps	RC	**Favorable**

I. Summary:

SB 1698 will ratify Rule 69O-186.013, F.A.C., titled Title Insurance Statistical Gathering, as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013. The rule, which implements s. 627.782(8), F.S., requires Florida licensed title insurance agencies and the retail sales offices of licensed title insurers selling directly to customers to annually submit specified statistical data that the OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida. The data will be used by the Financial Services Commission in its promulgation of title insurance rates. The ratification is for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.

The Statement of Estimated Regulatory Costs prepared by the OIR estimates that the rule will increase the costs of these agencies and retail sales offices by approximately $3,000 in the first year and $2,000 annually thereafter. The estimated cumulative 5-year impact of the rule is $22 million.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer[2] that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims

[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.
[2] S. 627.7711(3), F.S.

by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

The Office of Insurance Regulation (OIR) regulates title insurers, including licensing and promulgation of rates, while the Department of Financial Services (DFS) regulates title agents. Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[3]

Title Insurance Ratemaking

Section 627.782, F.S., requires title insurance rates to be promulgated pursuant to a rule adopted by the Financial Services Commission (Commission) that specifies the premium charged by title insurers in this state. If a title insurance policy is issued through an agent or agency, the title insurer must retain at least 30 percent of the premium. No portion of the premium attributable to providing a primary title service may be paid to a person who does not perform that service.

The Commission must give due consideration to the following factors in adopting premium rates by rule:[4]

- Title Insurers' loss experience and prospective loss experience under closing protection letters and policy liabilities.
- A reasonable margin for underwriting profit and contingencies, including contingent liabilities.[5] The profit must be sufficient to allow title insurers, agents, and agencies to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business and maintain an efficient title insurance delivery system.
- Past and prospective expenses for administration and handling of risks.
- Liability for defalcation.[6]
- Other relevant factors.

Rates for title insurance may not be excessive, inadequate, or unfairly discriminatory. The rates adopted by the Commission apply throughout the state,[7] though a title insurer may petition the OIR for an order authorizing a specific deviation from the adopted premium.[8]

The 2012 Legislature required each Florida-licensed title insurance agency, insurer, and insurer's direct or retail business in this state to maintain and submit to the OIR revenue, loss, and expense data that the OIR determines is necessary to analyze title insurance premium rates, title search costs, and the condition of the title insurance industry in the state.

[3] s. 627.786, F.S.
[4] s. 627.782(2), F.S.
[5] Under s. 627.7865, F.S., each title insurer is liable for an assessment to pay all the unpaid title claims on real property in Florida of a title insurer that is liquidated with unpaid outstanding claims.
[6] Defalcation occurs when a title insurance agent or agency misappropriates or embezzles funds held in trust in connection with a real estate closing transaction.
[7] s. 627.782(6), F.S.
[8] s. 627.783, F.S.

Rulemaking Authority and Legislative Ratification

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after implementation of the rule.[9]

Rule 69O-186.013, F.A.C.

Section 627.782(8), F.S., requires the Commission to adopt rules regarding the collection and analysis of data from the title insurance industry. The OIR prepared two rules for this purpose. Rule 69O-186.013, F.A.C., provides for a data call of title insurance agencies, while Rule 69O-186.014, F.A.C., provides for a data call of title insurance underwriters. The OIR submitted Rule 69O-186.013, F.A.C., to the legislature for ratification as required under s. 120.541(2), F.S., because the office determined it is likely to increase regulatory costs in excess of $1 million within 5 years of implementation.

The OIR Statement of Estimated Regulatory Costs (SERC) found that the rule is expected to increase the operating costs of title insurance agencies by $3,000 in the first year and $2,000 annually thereafter.[10] The office estimates that there are approximately 2,000 title insurance agencies and a small number of retail offices owned by title insurance underwriters. On a statewide basis, these offices will incur a cost of $6,000,000 in the first year and $4,000,000 in succeeding years. The estimated $22 million impact over 5 years implicates s. 120.541(1)(b), F.S. which prohibits an agency rule from going into effect if its regulatory costs exceed $1 million in the aggregate over 5 years.

III. Effect of Proposed Changes:

SB 1698 will ratify Rule 69O-186.013, F.A.C., titled Title Insurance Statistical Gathering, as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013. The rule, which implements s. 627.782(8), F.S., requires Florida licensed title insurance agencies and the retail sales offices of licensed title insurers selling directly to customers to annually submit specified statistical data that the OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida. The data will be used by the Financial Services Commission in its promulgation of title insurance rates. The ratification is for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.

[9] Section 120.541(2)(a)1.-3., F.S.

[10] Office of Insurance Regulation, *Statement of Estimated Regulatory Costs: Rule Number 69O-186.013*. (On file with the Senate Banking and Insurance Committee).

The bill will take effect upon becoming a law.

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 OIR Statement of Estimated Regulatory Costs (SERC) found that the rule is expected to increase the operating costs of title insurance agencies by $3,000 in the first year and $2,000 annually thereafter.[11] The office estimates that there are approximately 2,000 title insurance agencies and a small number of retail offices owned by title insurance underwriters. On a statewide basis, these offices will incur a cost of $6,000,000 in the first year and $4,000,000 in succeeding years.

C. Government Sector Impact:

Section 627.782, F.S., requires the OIR to annually collect title insurance data from insurers and agents, and to analyze such data once every 3 years to assist the Commission in its promulgation of title insurance rates. The OIR SERC report estimates the cost to the OIR of collecting the data is $50,000 per year and estimates that the cost of analyzing the data once every 3 years is $150,000. The report also opined that in years when the data is analyzed and new rates are proposed, additional costs could be incurred.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[11] Office of Insurance Regulation, *Statement of Estimated Regulatory Costs: Rule Number 69O-186.013*. (On file with the Senate Banking and Insurance Committee).

VIII. Statutes Affected:

None.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-03221-14 20141698__

A bill to be entitled

An act relating to the ratification of rules of the Office of Insurance Regulation; ratifying a specified rule requiring title insurance agencies and the retail offices of certain title insurance underwriters to electronically submit certain statistical data; providing applicability; providing an effective date.

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

Section 1. (1) Rule 69O-186.013, Florida Administrative Code, titled "Title Insurance Statistical Gathering," as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013, is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes

(2) This act serves no other purpose and is not to be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Florida Senate - 2014 **SB 1698**

597-03221-14 20141698__

Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/14
Meeting Date

Topic Data Call Rule Ratification

Bill Number SB 1698 *(if applicable)*

Name Alexandra Overhoff

Amendment Barcode _____ *(if applicable)*

Job Title Exec. Dir

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail alex@flta.org

Speaking: ☒ For ☐ Against ☐ Information

Representing FLTA

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 28, 2014

I respectfully request that **Senate Bill 1698**, relating to Ratification of Rules of the Office of Insurance Regulation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

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 1526
INTRODUCER:	Rules Committee; Judiciary Committee and Senator Thrasher
SUBJECT:	Public Records/Department of Legal Affairs
DATE:	April 10, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Davis	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1526 provides the public records exemptions for CS/CS/SB 1524, which establishes the Florida Information Protection Act of 2014. The Act requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs and affected individuals when a security breach occurs and personal information held in electronic form is illegally accessed.

The bill provides that certain information reported to the Department of Legal Affairs relating to security breaches or received pursuant to investigations is confidential and exempt from public inspection pursuant to statute and the State Constitution. The bill also provides for future review and repeal in accordance with the Open Government Sunset Review Act and contains a statement of public necessity as required by law.

II. Present Situation:

Public Records - Access

The state's public records laws, which guarantee access to government records, are contained in both the State Constitution and Florida Statutes.

State Constitution

The State Constitution, in article I, section 24, guarantees every person the right to inspect or copy any public record of:

- The legislative, executive, and judicial branches;
- Each agency or department of those branches;
- Counties, municipalities, and districts; and
- Each constitutional officer, board, and commission, or entity created pursuant to law or the Constitution.[1]

The Legislature is authorized, however, to exempt records by general law from that provision if the law:
- States with specificity the public necessity that justifies the exemption; and
- Is no broader than necessary to accomplish the stated purpose of the law.

The legislation proposing the exemption requires a two-thirds vote of each chamber for passage.[2]

State Statute

Section 119.07(1), F.S., requires every person who has custody of a public record to 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 public records.[3]

Public Records - Requirements

An exemption from the disclosure requirements must serve an identifiable public purpose and be no broader than necessary to meet the public purpose it serves.[4] An identifiable public purpose is served if the exemption:
- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program that would be significantly impaired without the exemption;
- Protects sensitive personal information that would be defamatory or cause unwarranted damage to a person's reputation or would jeopardize the person's safety if released; however, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature such as trade secrets.

Florida Information Protection Act of 2014 – CS/CS/SB 1524

CS/CS/SB 1524 creates the Florida Information Protection Act.[5] The bill[6] requires that certain commercial and governmental entities provide notice to the Department of Legal Affairs and affected individuals when a breach of security occurs involving the access of personal information of 500 or more individuals.

A breach of security is defined as an unauthorized access of data in electronic form containing personal information. Personal information includes a person's name in combination with: a

[1] FLA. CONST. art. I, s. 24(a).
[2] FLA. CONST. art. I, s. 24(c).
[3] Section 119.07(1)(a), F.S.
[4] Section 119.15(5)(b), F.S.
[5] Much of the information in CS/SB 1524 is currently contained in s. 817.5681, F.S., which is repealed in that bill.
[6] See the Bill Analysis and Fiscal Impact Statement of CS/CS/SB 1524 by the Rules Committee for more detailed information about the bill.

social security number; a driver license or identification card number, passport number, military identification number or other similar number issued on a government document used to verify identity; a financial account number or credit or debit card number in combination with a required security or access code or password necessary to gain access to a person's financial account; certain medical information; or a person's health insurance policy number or subscriber identification number or similar identifier identification. Personal information also includes a username or e-mail address in combination with a password or security question and answer that permits access to an online account.

III. Effect of Proposed Changes:

Confidential and Exempt Information

Under the bill, all information received by the Department of Legal Affairs pursuant to notification of a security breach or received by the department pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency is confidential and exempt from public records requirements until the investigation is completed or ceases to be active.

While an investigation is considered active, the Department of Legal Affairs may disclose confidential and exempt information:

- In furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the department determines that the release would assist in notifying the pubic or locating or identifying a person that the department believes to have been a victim of the breach or improper disposal of customer records, except that information made confidential and exempt may not be released if that information is covered by another public records exemption, is personal information or a computer forensic report, would reveal weaknesses in a covered entity's data security, or would disclose a covered entity's proprietary information; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

After the completion of an investigation or once the investigation is no longer active, the following information shall remain confidential and exempt from public record requirements:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information what would reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's proprietary information.

Proprietary information means information that:

- Is owned or controlled by the covered entity.
- Is intended to be private and is treated by the covered entity as private because disclosure would harm the entity or its business operations.
- Has not been disclosed except as required by law or a private agreement that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

- Includes trade secrets or competitive interests, which, if disclosed would impair the competitive business of the covered entity that is the subject of the information.

Open Government Sunset Review Act

The bill provides for repeal of the public records exemption on October 2, 2019, unless it is reviewed and saved from repeal through reenactment by the Legislature.

Statement of Public Necessity

The bill provides a statement of public necessity as required in the State Constitution. The statement provides reasons why information received by the department pursuant to a notification of a security breach or received by the department pursuant to an investigation by the department or a law enforcement agency should be made confidential and exempt. The general reasons are that:

- Premature release of the confidential and exempt information could jeopardize an investigation;
- Release of the confidential information that is also protected from release by a separate, existing public record exemption would render void the additional exemption;
- Publication of sensitive personal data information could result in identity theft, financial harm, or disclosure of personal health matters;
- Disclosure of a computer forensic report could reveal weaknesses in an entity's data security and make it vulnerable to future data breaches; and
- Release of proprietary information or trade secrets could result in financial loss to the business and provide competitors with an unfair advantage.

Contingent Effective Date

The bill contains a contingent effective date. It takes effect on the same date that CS/SB 1524, or similar legislation takes effect, if that legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a public records exemption that must be approved by a two-thirds vote of the membership of each house of the Legislature.

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 creates section 501.171 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 Rules on April 9, 2014:
The CS/CS provides that information that is permanently confidential and exempt may not be disclosed by the Department of Legal Affairs during an active investigation for purposes of notifying the public or locating or identifying someone believed to be a victim of a data breach or improper disposal of customer records. That confidential and exempt information includes:

- Information covered by another public records exemption;
- Personal information;
- A computer forensic report;
- Information that would reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's proprietary information.

CS by Judiciary on April 1, 2014:
The CS differs from the original bill by:

- Including a definition of proprietary information;
- Providing for future repeal of the public records exemption on October 2, 2019, if not reenacted by the Legislature; and

- Expanding the statement of public necessity to include additional reasons why the confidential and exempt information should be exempt from public access.

B. Amendments:

None.

300950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2014	.	
	.	
	.	
	.	

The Committee on Rules (Thrasher) recommended the following:

Senate Amendment

Delete line 38
and insert:
customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

By the Committee on Judiciary; and Senator Thrasher

590-03545-14 20141526c1

A bill to be entitled

An act relating to public records; amending s. 501.171, F.S.; creating an exemption from public records requirements for information received by the Department of Legal Affairs pursuant to a notice of a data breach or pursuant to certain investigations; authorizing disclosure under certain circumstances; defining the term "proprietary information"; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; 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 (11) is added to section 501.171, Florida Statutes, as created by SB 1524, 2014 Regular Session, to read:

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification required by this section, or received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made

590-03545-14 20141526c1

confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

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

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper disposal of customer records; or

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

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a covered entity's data security.

5. Information that would disclose a covered entity's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the covered entity.

2. Is intended to be private and is treated by the covered entity as private because disclosure would harm the covered

entity or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the covered entity who is the subject of the information.

(e) 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 all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.171, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.171, Florida Statutes, is likely to result in an investigation of such violation because a data breach is likely the result of criminal activity that may lead to further criminal activity. The premature release of such information could frustrate or thwart

the investigation and impair the ability of the Department of Legal Affairs to effectively and efficiently administer s. 501.171, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the Department of Legal Affairs would undo the specific statutory exemption protecting that information.

(3) An investigation of a data breach or improper disposal of customer records is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial and health information. Such information could be used for the purpose of identity theft. In addition, release of such information could subject possible victims of the data breach or improper disposal of customer records to further financial harm. Furthermore, matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors.

(4) Release of a computer forensic report or other information that would otherwise reveal weaknesses in a covered entity's data security could compromise the future security of that entity, or other entities, if such information were available upon conclusion of an investigation or once an

investigation ceased to be active. The release of such report or information could compromise the security of current entities and make those entities susceptible to future data breaches. Release of such report or information could result in the identification of vulnerabilities and further breaches of that system.

(5) Notices received by the Department of Legal Affairs and information received during an investigation of a data breach are likely to contain proprietary information, including trade secrets, about the security of the breached system. The release of the proprietary information could result in the identification of vulnerabilities and further breaches of that system. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the covered entity submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

Section 3. This act shall take effect on the same date that SB 1524 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension 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)

4-9-14
Meeting Date

Topic Florida Information Protection Act

Bill Number 1526 *(if applicable)*

Name Russell Kent

Amendment Barcode *(if applicable)*

Job Title Special Counsel

Address The Capitol, PL-01
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 414-3854

E-mail RUSSELL.KENT@MYFLORIDALEGAL.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing Attorney General'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)

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 4/9/2014 4:02:18 PM
Ends: 4/9/2014 5:47:18 PM Length: 01:45:01

4:02:20 PM Senator Thrasher calls the meeting to order
4:02:25 PM roll call
4:02:30 PM quorum present
4:03:02 PM Senator Rings moves that CS/SB 990 be temporarily postponed - without objection
4:03:20 PM Senator Brandes moves SB 922 be temporarily postponed - without objection
4:03:42 PM Senator Galvano moves that CS/SB 372 be temporarily postponed - without objection
4:04:07 PM CS/CS/SB 976
4:04:12 PM Senator Bean explains the bill
4:04:41 PM Brian Pitts, Justice-2-Jesus, speaks
4:05:55 PM Senator Bean waives close
4:06:05 PM roll call
4:06:30 PM CS/CS/SB 976 reported favorably
4:06:34 PM CS/SB 862
4:06:38 PM Senator Bean explains the bill
4:07:21 PM Michael Jackson, Florida Pharmacy Association, waives in support
4:07:30 PM Larry Gonzalez, Florida Society of Health-System Pharmacists, waives in support
4:07:42 PM Lou Marino, Florida Sheriff's Association, waives in support
4:07:43 PM Electra Bustle, Florida Sheriff's Association, waives in support
4:07:47 PM Senator Bean waives close
4:07:54 PM roll call
4:08:09 PM CS/SB 862 reported favorably
4:08:27 PM CS/SB 866
4:08:30 PM Senator Bean explains the bill
4:08:44 PM Tom Bertolami, Florida Sheriff's Association, waives in support
4:09:00 PM Senator Bean waives close
4:09:08 PM roll call
4:09:13 PM CS/SB 866 reported favorably
4:09:55 PM CS/SB 414
4:09:58 PM Senator Dean explains the bill
4:10:27 PM Brian Pitts speaks
4:11:15 PM Pam Pfeifer, USF Health, waives in support
4:11:22 PM Senator Dean waives close
4:11:32 PM roll call
4:11:54 PM CS/SB 414 reported favorably
4:12:03 PM CS/CS/SB 350
4:12:20 PM Kimberly Diaz explains the bill
4:12:28 PM Brian Pitts waives in support
4:12:38 PM Kimberly Diaz waives close
4:12:41 PM roll call
4:12:49 PM CS/CS/SB 350 reported favorably
4:13:18 PM CS/SB 1318
4:13:23 PM Senator Evers explains the bill
4:13:52 PM Richard Watson, Associated Builders & Contractors of FL, waives in support
4:14:04 PM Senator Evers waives close
4:14:11 PM roll call
4:14:36 PM CS/SB 1318 reported favorably
4:14:54 PM CS/SB 764
4:14:56 PM Senator Detert explains the bill
4:16:58 PM Amendment 387314
4:17:09 PM Senator Smith explains the amendment
4:17:43 PM Amendment 654744 withdrawn
4:18:00 PM Substitute Amendment 732958

4:18:09 PM Senator Smith explains the substitute amendment
4:18:45 PM Senator Detert speaks on substitute amendment
4:19:51 PM Senator Simmons with a question
4:21:40 PM Senator Detert responds
4:22:12 PM Representative Passidomo speaks on substitute amendment
4:24:02 PM Senator Simmons with a question
4:25:02 PM Representative Passidomo responds
4:26:21 PM Nancy Daniels, Florida Public Defender Association, Inc., speaks
4:28:16 PM Buddy Jacobs, The State Attorneys of Fla., speaks
4:30:12 PM Senator Smith with a question
4:30:43 PM Mr. Jacobs responds
4:31:20 PM Senator Richter with a question to Senator Smith
4:32:25 PM Senator Smith responds
4:32:56 PM Senator Detert speaks on the substitute amendment
4:34:02 PM Bill temporarily passed
4:34:17 PM SB 386
4:34:22 PM Senator Hays explains the bill
4:35:06 PM Senator Sobel with a question
4:35:22 PM Senator Hays responds
4:36:09 PM Senator Sobel with a follow-up
4:36:57 PM Senator Hays responds
4:38:12 PM Senator Margolis with a question
4:40:35 PM Senator Hays responds
4:41:34 PM Senator Margolis with a follow-up
4:42:22 PM Senator Hays responds
4:43:09 PM Senator Sobel with a question
4:43:15 PM Senator Hays responds
4:43:27 PM Pamela Burch Fort, ACLU of Florida, waives in opposition
4:43:41 PM Brian Pitts speaks
4:44:39 PM Mark Schlakman, FSU Center for the Advancement of Human Rights, speaks
4:48:15 PM Sara Johnson, Florida Family Action, waives in support
4:48:21 PM Mark Flynn, Emerge USA, speaks
4:51:46 PM Amy Datz, NCJW, waives in opposition
4:52:00 PM Senator Sobel in debate
4:52:48 PM Senator Simmons in debate
4:56:15 PM Senator Margolis is debate
4:57:37 PM Senator Thrasher speaks
4:58:17 PM Senator Hays closes on the bill
4:59:48 PM roll call
5:00:21 PM SB 386 reported favorably
5:00:31 PM Back on CS/SB 764
5:00:33 PM Amendment 676158
5:00:49 PM Senator Detert explains amendment to the substitute amendment
5:01:33 PM amendment to the substitute amendment adopted
5:01:44 PM Senator Smith closes on the substitute amendment
5:02:00 PM Substitute amendment adopted
5:02:02 PM Back on the bill
5:02:09 PM Senator Negron in debate
5:06:28 PM Senator Smith in debate
5:07:10 PM Senator Detert closes on the bill
5:07:23 PM roll call
5:07:53 PM CS/SB 764 reported favorably
5:07:55 PM Bill was made a CS
5:08:07 PM CS/SB 1140
5:08:10 PM Senator Hays explains the bill
5:08:44 PM Brian Pitts waives in support
5:08:53 PM Julie Roberts, Division of Emergency Management, waives in support
5:08:56 PM Senator Hays waives close
5:08:58 PM roll call
5:09:17 PM CS/SB 1140 reported favorably
5:09:33 PM CS/SB 608
5:09:40 PM Elizabeth Fetterhoff explains the bill

5:10:16 PM Amendment 629070
5:10:47 PM Elizabeth Fetterhoff explains the amendment
5:11:51 PM Amendment 968080 to the amendment
5:11:59 PM Senator Smith explains the amendment to the amendment
5:13:01 PM Senator Smith waives close
5:13:09 PM amendment to the amendment adopted
5:13:46 PM Lisa Henning, Florida Law Enforcement Memorial, waives in support
5:14:04 PM John Rivera, Florida Police Benevolent Association, waives in support
5:14:17 PM David Murrell, Florida Police Benevolent Association, waives in support
5:14:31 PM Amendment adopted
5:14:36 PM back on the bill
5:14:41 PM Elizabeth Fetterhoff waives close
5:14:48 PM Motion for CS
5:14:52 PM roll call
5:14:59 PM CS/SB 608 reported favorably
5:15:22 PM CS/SM 368
5:15:32 PM Patrick Weightman explains the bill
5:16:11 PM Brian Pitts speaks
5:17:07 PM Amy Datz waives in opposition
5:17:12 PM Spider Webb waives in support
5:17:26 PM Patrick Weightman waives close
5:17:30 PM roll call
5:17:58 PM CS/SM 368 reported favorably
5:18:09 PM SB 1046 temporarily postponed without objection
5:18:25 PM CS/CS/SB 808
5:18:29 PM Senator Galvano explains the bill
5:19:04 PM Senator Latvala with a question
5:19:13 PM Senator Galvano responds
5:19:25 PM Brian Pitts waives in opposition
5:19:46 PM Senator Galvano waives close
5:19:52 PM roll call
5:20:00 PM CS/CS/SB 808 reported favorably
5:20:21 PM CS/SB 650
5:20:26 PM Tom Cibula explains the bill
5:20:48 PM Tom Cibula waives close
5:20:56 PM roll call
5:21:02 PM CS/SB 650 reported favorably
5:21:20 PM SB 566
5:21:23 PM Senator Lee explains the bill
5:23:03 PM Senator Smith with a question
5:23:37 PM Senator Lee responds
5:24:10 PM Adam Giery, Florida Chamber of Commerce, speaks
5:24:33 PM Richard Gentry, Economic Council of Palm Beach County, waives in support
5:24:43 PM Senator Sobel in debate
5:25:17 PM Senator Lee closes on the bill
5:26:42 PM roll call
5:27:09 PM SB 566 reported favorably
5:27:13 PM CS/CS/SB 602
5:27:21 PM Senator Latvala explains the bill
5:27:48 PM Amendment 442740
5:27:53 PM Senator Latvala explains the amendment
5:28:19 PM Senator Latvala waives close on amendment
5:28:34 PM voice vote taken, amendment is adopted
5:28:44 PM Back on the bill
5:28:49 PM Brian Pitts speaks
5:29:38 PM Motion for CS
5:30:02 PM Senator Latvala waives close
5:30:03 PM roll call
5:30:24 PM CS/CS/SB 602 reported favorably
5:30:29 PM CS/SB 1226
5:30:33 PM Senator Montford explains the bill
5:31:04 PM Amendment 913102

5:31:08 PM Senator Montford explains the amendment
5:31:30 PM Robert Cerra, Lee County School Board, waives in support
5:31:44 PM without objection, amendment adopted
5:31:52 PM Amendment 248138 by Senator Ring withdrawn
5:32:05 PM Amendment 132132 also extinguished by withdrawal
5:32:11 PM back on the bill
5:32:16 PM Tanya Cooper, Department of Education, waives in support
5:32:22 PM Senator Montford waives close
5:32:31 PM Motion for CS
5:32:35 PM roll call
5:32:50 PM CS/SB 1226 reported favorably
5:33:06 PM CS/SB 1396
5:33:15 PM Senator Montford explains the bill
5:33:29 PM Amendment 173944
5:33:34 PM Senator Montford explains the amendment
5:34:29 PM without objection, amendment adopted
5:34:41 PM back on the bill
5:34:46 PM Richard Watson, Associated Builders and Contractors of Florida, waives in support
5:34:51 PM Motion for CS
5:35:06 PM Senator Montford waives close
5:35:13 PM roll call
5:35:36 PM CS/SB 1396 reported favorably
5:35:40 PM CS/SB 840
5:35:47 PM Senator Richter explains the bill
5:35:56 PM Brian Pitts waives in opposition
5:36:07 PM Senator Richter waives close
5:36:09 PM roll call
5:36:34 PM CS/SB 840 reported favorably
5:36:39 PM CS/CS/SB 1278
5:36:49 PM Senator Richter explains the bill
5:37:08 PM Senator Richter waives close
5:37:16 PM roll call
5:37:40 PM CS/CS/SB 1278 reported favorably
5:37:49 PM SB 1678
5:37:56 PM Senator Ring explains the bill
5:38:17 PM Senator Ring waives close
5:38:24 PM roll call
5:38:50 PM SB 1678 reported favorably
5:38:54 PM CS/CS/SB 1308
5:39:09 PM Senator Simmons explains the bill
5:40:18 PM Monte Sevens, OIR, waives in support
5:40:23 PM Ashley Mayer, AIF, waives in support
5:40:34 PM Brian Pitts speaks
5:41:22 PM Senator Simmons waives close on the bill
5:41:29 PM roll call
5:43:07 PM CS/CS/SB 1308 reported favorably
5:43:10 PM SB 1698
5:43:14 PM Senator Simmons explains the bill
5:43:52 PM Alexandra Overhoff, FLTA, waives in support
5:44:00 PM Senator Simmons waives close
5:44:06 PM roll call
5:44:26 PM SB 1698 reported favorably
5:44:30 PM Senator Smith takes the chair
5:44:43 PM CS/SB 1526
5:44:44 PM Senator Thrasher explains the bill
5:45:12 PM Amendment 300950
5:45:17 PM Senator Thrasher explains the amendment
5:45:26 PM without objection, amendment adopted
5:45:33 PM back on the bill
5:45:41 PM Russell Kent, Attorney General's Office, waives in support
5:45:50 PM Motion for CS
5:45:55 PM Senator Thrasher waives close

5:46:01 PM roll call
5:46:06 PM CS/SB 1526 reported favorably
5:46:18 PM Senator Thrasher takes the chair
5:47:05 PM Senator Montford moves we rise

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Education
Ethics and Elections
Gaming
Governmental Oversight and Accountability
Rules

SENATOR LIZBETH BENACQUISTO
Majority Leader
30th District

April 9, 2013

The Honorable John Thrasher, Chair
Senate Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher,

Please excuse me from attending the Senate Committee on Rules on April 9th. I have a commitment at that time. Please contact me if you have any questions.

Sincerely,

Lizbeth Benacquisto
Senate District 30
Majority Leader

REPLY TO:
❒ 1926 Victoria Ave, 2nd Floor, Fort Myers, Florida 33901 (239) 338-2570
❒ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore