

SB 7012 by **BI**; (Identical to H 7089) OGSR/Credit History Information and Credit Scores/Office of Financial Regulation

SB 456 by **Braynon (CO-INTRODUCERS) Smith**; (Similar to H 0325) Labor Pools

SB 570 by **Dean**; (Identical to H 0619) Service of Process of Witness Subpoenas

CS/CS/SB 182 by **GO, HE, Hays**; (Similar to CS/H 0223) Public Records and Meetings/Postsecondary Education
Executive Search

786806	A	S	FAV	RC, Latvala	Delete L.32 - 104:	03/19 03:13 PM
576962	A	S	WD	RC, Richter	Delete L.66:	03/19 03:13 PM

CS/CS/SB 342 by **CJ, JU, Simmons**; (Similar to CS/H 0717) No Contact Orders

918260	A	S	RCS	RC, Simmons	Delete L.37:	03/19 03:25 PM
--------	---	---	-----	-------------	--------------	----------------

CS/SB 1312 by **JU, Simmons (CO-INTRODUCERS) Gaetz**; (Similar to H 1041) Strategic Lawsuits Against Public Participation

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Simmons, Chair
Senator Soto, Vice Chair

MEETING DATE: Thursday, March 19, 2015
TIME: 1:00 —3:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/CS/SB 182 Governmental Oversight and Accountability / Higher Education / Hays (Similar CS/H 223)	Public Records and Meetings/Postsecondary Education Executive Search; Providing an exemption from public records requirements for identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution; providing an exemption from public meeting requirements for any portion of a meeting which is held for the purpose of identifying or vetting, or which would otherwise disclose identifying information of, potential applicants for president, provost, or dean; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. HE 02/16/2015 Fav/CS GO 03/04/2015 Fav/CS RC 03/19/2015	Amendment Adopted - Temporarily Postponed
2	SB 456 Braynon (Similar H 325)	Labor Pools; Revising methods by which a labor pool is required to compensate day laborers; requiring a labor pool to provide certain notice before a day laborer's first pay period; specifying requirements for a labor pool that selects to compensate a day laborer by payroll debit card; authorizing a labor pool to deliver a wage statement electronically upon request by the day laborer, etc. CM 02/16/2015 Favorable BI 03/10/2015 Favorable RC 03/19/2015 Favorable	Favorable Yeas 12 Nays 0
3	SB 570 Dean (Identical H 619)	Service of Process of Witness Subpoenas; Providing that service of a subpoena on a witness in a civil traffic case may be made by United States mail directed to the witness at the last known address and that such service must be mailed before a specified period, etc. JU 03/03/2015 Favorable TR 03/12/2015 Favorable RC 03/19/2015 Favorable	Favorable Yeas 13 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 19, 2015, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 342 Criminal Justice / Judiciary / Simmons (Similar CS/H 717)	No Contact Orders; Providing for the effect and enforceability of orders of no contact as a part of pretrial release; requiring that the defendant receive a copy of the order of no contact prior to release; specifying acts prohibited by a no contact order, etc. JU 02/17/2015 Fav/CS CJ 03/10/2015 Fav/CS RC 03/19/2015 Fav/CS	Fav/CS Yeas 13 Nays 0
5	CS/SB 1312 Judiciary / Simmons (Similar H 1041)	Strategic Lawsuits Against Public Participation; Providing that legislative intent includes the protection of specified forms of free speech; defining the phrase "free speech in connection with public issues", etc. JU 03/10/2015 Fav/CS RC 03/19/2015 Favorable	Favorable Yeas 13 Nays 0
6	SB 7012 Banking and Insurance (Identical H 7089)	OGSR/Credit History Information and Credit Scores/Office of Financial Regulation; Amending provisions which provide a public records exemption for credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers, and mortgage lenders; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/10/2015 Favorable RC 03/19/2015 Favorable	Favorable 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: SB 7012

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Credit History Information and Credit Scores/Office of Financial Regulation

DATE: March 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>		BI Submitted as Committee Bill
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Johnson</u>	<u>Knudson</u>	<u>RC</u>	Favorable

I. Summary:

SB 7012 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of a public records exemption that makes credit history information and credit scores held by the Office of Financial Regulation (OFR) confidential and exempt from public-records requirements.¹ The OFR licenses and regulates loan originators (non-depository mortgage brokers and mortgage lenders).² Applicants for initial licensure or renewal of a license must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness, as required by the federal SAFE Mortgage Licensure Act of 2008.³ As part of this licensure process, an applicant must authorize the release of an independent credit report and credit score to the OFR.⁴

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2015, unless reenacted by the Legislature. This bill continues the exemption and does not expand the scope of the public records exemption. The reenactment of the exemption would continue to protect sensitive personal financial information of applicants from being disclosed. The release of such sensitive personal information would be defamatory and make those persons vulnerable to identity theft and other crimes.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with

¹ Section 494.00125, F.S.

² Chapter 494, F.S.

³ Parts II and III of chapter 494, F.S.

⁴ Sections 494.00312, 494.00313, 494.00611, and 494.00612, F.S.

the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁵ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.⁶ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.⁷

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 Act⁸ guarantees every person's right to inspect and copy any state or local government public record.⁹ The Sunshine Law¹⁰ 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.¹¹

The Legislature may create an exemption to public records or open meetings requirements.¹² An exemption must specifically state the public necessity justifying the exemption¹³ and must be tailored to accomplish the stated purpose of the law.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

⁵ FLA. CONST., art. I, s. 24(a).

⁶ FLA. CONST., art. I, s. 24(b).

⁷ FLA. CONST., art. I, s. 24(b).

⁸ Chapter 119, F.S.

⁹ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

¹⁰ Section 286.011, F.S.

¹¹ 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 the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, 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.

¹² 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ FLA. CONST., art. I, s. 24(c).

meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The 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.¹⁷ An exemption serves an identifiable purpose if it meets one of the following criteria: It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸ Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or it protects trade or business secrets.²⁰ In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.²¹

The OGSR also requires specific questions to be considered during the review process.²² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁴

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does 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 section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(b), F.S.

²² Section 119.15(6)(a), F.S. The questions are:

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

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

Regulation of Loan Originators

Federal SAFE Mortgage Licensing Act

The federal Housing and Economic Recovery Act was enacted on July 30, 2008,²⁵ Title V of this Act is titled “The Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (SAFE Act or SAFE). The intent of SAFE is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements for loan originators.²⁶ Loan originators must undergo state licensure and annual renewal, provide fingerprints to the regulator for submission to any state or registry authorized to conduct a criminal background check, and allow the regulator to access a credit report through the registry.

The Act directs the establishment of a nationwide mortgage licensing system and registry (NMLS or registry). The SAFE Act requires states to comply with these minimum standards²⁷ and participate in the registry to facilitate states' compliance with the requirements of SAFE.²⁸ The registry collects and maintains specified information on loan originators. The purpose of the registry is to create a common database on loan originators among federal and state regulators, provide information to the public about the employment history of loan originators, and maintain a history of disciplinary and enforcement actions against loan originators.

The SAFE Act creates confidentiality standards for the federal and state regulators who participate in the registry, which collects a common pool of information from each participant. For example, only state regulators have access to review credit information, including credit scores, on licensees and must comply with certain terms and conditions.²⁹ For example, only authorized recipients may have access to or view the services and consumer report information. Authorized recipients may not disseminate or provide third party access to the services or consumer report information.³⁰

Except as otherwise provided, SAFE applies federal or state privacy or confidentiality laws, and any privilege arising under federal or state law, after information has been disclosed to the NMLS. Such information may be shared with all state and federal regulatory officials with mortgage regulatory authority without loss of privilege or loss of confidentiality protections provided by such laws.³¹ Any state law in conflict with this standard is superseded to the extent it provides less confidentiality or privilege.³² These requirements do not apply to information that

²⁵ Public Law 110-289.

²⁶ H.R. 3221, Public Law 110-289, Title V, s. 1502.

²⁷ The SAFE Act provides that, if a state does not enact minimum regulatory standards that comply with the SAFE after the enactment, the U.S. Department of Housing and Urban Development (HUD) will enforce the minimum standards for loan originators operating in Florida as state-licensed loan originators.

²⁸ NMLS Resource Center, available at <http://mortgage.nationwidelicencingsystem.org/safe/Pages/default.aspx> 9last visited January 30, 2015).

²⁹ Frequently Asked Questions, NMLS, available at <http://mortgage.nationwidelicencingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited January 30, 2015).

³⁰ Correspondence from the Office of Financial Regulation (January 27, 2015) (on file with Senate Banking and Insurance Committee).

³¹ H.R. 3221, Public Law 110-289, Title V, s. 1512.

³² Title V, sec. 1512(a)-(c).

is in the registry regarding a loan originator's employment history, or publicly adjudicated disciplinary and enforcement history.³³

Florida Regulation of Loan Originators

In Florida, the Office of Financial Regulation (OFR) regulates non-depository loan originators and other specified financial entities.³⁴ In 2009, the Legislature enacted and the Governor approved legislation³⁵ bringing the state into compliance with the SAFE Mortgage Licensing Act of 2008. Effective October 1, 2010, the OFR began accepting and processing applications for loan originator licenses.

The licensure and renewal process includes a review of the applicant's credit report and credit information by the state regulator, which OFR accesses through the registry. Every individual applying for state licensure as a mortgage loan originator is required to complete the credit authorization process through the NMLS.³⁶ The credit report obtained through NMLS is a TransUnion Credit Report with a Vantage Score. The OFR is required to comply with terms and conditions relating to the confidentiality of this information.

Once the OFR accesses a credit report, the OFR evaluates any adverse information contained in an applicant's credit report in the context of the "totality of the circumstances."³⁷ For example, an adverse item may result from inaccuracies in the credit report or factors that do not necessarily reflect negatively upon the applicant's character, general fitness, or financial responsibility.³⁸ The OFR must notify applicants of specific items of concern and provide the applicant with an opportunity to explain the circumstances surrounding the specific items and provide additional relevant information or documentation relating to the OFR's determination. During this process, the OFR must consider the following information for determining whether a person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the OFR's determination that the person will operate honestly, fairly, and efficiently:

1. The relevant person's entire credit history as reflected in the credit report.
2. The information provided by the relevant person.
3. The responses contained in the license application.
4. The previous licensing history with the OFR including whether the relevant person was named in any regulatory action by the OFR.
5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.

³³ Title V, sec. 1512(d).

³⁴ The OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. Section 20.121(3), F.S.

³⁵ Chapter 2009-241, Laws of Florida.

³⁶ See Frequently Asked Questions at <http://mortgage.nationwidelicencingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited January 29, 2015).

³⁷ Rule 69V-40.0113, F.A.C.

³⁸ A 2013 Federal Trade Commission report found that one in five consumers had an error on at least one of their three credit reports. The report can be viewed at <http://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports> (last visited January 29, 2015).

6. The time and context of the information available and any pattern of behavior the information may demonstrate.³⁹

In considering the totality of circumstances, the fact that an applicant has been a debtor in a bankruptcy or has been the control person of a bankrupt company cannot be the sole basis of the OFR’s determination to deny the issuance of a license.⁴⁰ The OFR may not use a credit score or the absence or insufficiency of credit history information to determine charter, general fitness, or financial responsibility. If the OFR uses information contained in a credit report as the basis for denying a license, the OFR is required to provide particularity for the grounds or basis for denial.⁴¹

The OFR⁴² provided the following data⁴³ concerning denials and withdrawals in recent years:

Loan Originator Application Denials & Withdrawals			
	FY 2011-12	FY 2012-13	FY 2013-14
Denials	1958	134	165
Withdrawals	340	93	97
Total	2298	227	262
Loan Originator Renewal Denials & Withdrawals			
	FY 2011-12	FY 2012-13	FY 2013-14
Denials	76	31	58
Withdrawals	28	18	16
Total	104	49	74

Public Records Under Review

Section 494.00125(3), F.S., provides that credit history information and credit scores held by the OFR related to the licensure under ch. 494, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, this public records exemption does not apply to information that is otherwise publicly available. The OFR is authorized to provide such credit history information and credit scores to other governmental entities having regulatory or law enforcement authority.

Credit reports can include credit history information regarding credit card usage and limits, loans, outstanding tax liens, uncollectible debt, bankruptcies, and foreclosures. Chapter 494, F.S., defines the term, “credit report,” to mean any written, oral, or other information obtained from a consumer-reporting agency as described in the federal Fair Credit Reporting Act, which bears on

³⁹ Rule 69V-40.0113, F.A.C.

⁴⁰ Sections 494.00611, 494.00321, and 494.067, F.S.

⁴¹ *Id.*

⁴² Correspondence from the Office of Financial Regulation (January 26, 2015) (on file with the Senate Committee on Banking and Insurance).

⁴³ If an applicant has been denied licensure in any state, the applicant must disclose this reportable event in future application submission in any state. Because of this requirement, many applicants will withdraw their application rather than having a record of a licensure denial that would be available on the registry. The OFR does not track on their internal licensing system the reasons for denials.

an individual's credit worthiness, credit standing, or credit capacity. A credit score alone, as calculated by the reporting agency, is not considered a credit report.⁴⁴ The term, "credit score," is defined in s. 494.001(8), F.S.

III. Effect of Proposed Changes:

The bill repeals the expiration date, thereby continuing the public records exemption for credit history information and credit scores held by the Office of Financial Regulation pursuant to s. 494.00125, F.S. The effective date of the bill is October 1, 2015.

The continuation of this exemption will protect sensitive personal financial information of applicants from being subject to disclosure. The release of such information could make those persons vulnerable to identity theft and other crimes and could adversely affect the name or reputation of an applicant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill continues a current exemption but does not expand the scope of an existing public records exemption; therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The continuation of this exemption protects an applicant's sensitive, personal financial information held by the OFR. The disclosure of such information could make those persons vulnerable to identity theft and other crimes. In addition, the release of such exempted information contained in a credit report or a credit score could adversely affect the name or reputation of an applicant.

⁴⁴ Section 494.001(7), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 494.00321, 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 Banking and Insurance

597-01476-15

20157012__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 494.00125, F.S., which
 4 provides a public records exemption for credit history
 5 information and credit scores held by the Office of
 6 Financial Regulation for purposes of licensing loan
 7 originators, mortgage brokers, and mortgage lenders;
 8 saving the exemption from repeal under the Open
 9 Government Sunset Review Act; providing an effective
 10 date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Subsection (3) of section 494.00125, Florida
 15 Statutes, is amended to read:
 16 494.00125 Public records exemptions.—
 17 (3) CREDIT INFORMATION.—
 18 (a) Credit history information and credit scores held by
 19 the office and related to licensing under ss. 494.001-494.0077
 20 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 21 I of the State Constitution.
 22 (b) Credit history information and credit scores made
 23 confidential and exempt pursuant to paragraph (a) may be
 24 provided by the office to another governmental entity having
 25 oversight or regulatory or law enforcement authority.
 26 (c) This subsection does not apply to information that is
 27 otherwise publicly available.
 28 ~~(d) This subsection is subject to the Open Government~~
 29 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~

Page 1 of 2

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

597-01476-15

20157012__

30 ~~repealed on October 2, 2015, unless reviewed and saved from~~
 31 ~~repeal through reenactment by the Legislature.~~
 32 Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 456

INTRODUCER: Senators Braynon and Smith

SUBJECT: Labor Pools

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Siples</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 456 allows labor pools to offer additional methods to compensate day laborers for services performed. These new methods include an electronic fund transfer to the financial institution designated by the day laborer and a payroll debit card, which does not charge a fee for withdrawal of its contents. The labor pool must notify the day laborer of the payment method it intends to use and provide the day laborer the option to be paid by another authorized method. The bill authorizes the labor pool to provide a wage statement electronically upon written request of the day laborer.

II. Present Situation:

The Labor Pool Act

Part II of ch. 448, F.S., also known as the Labor Pool Act,¹ was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state. The act also outlines uniform standards of conduct and practice for labor pools. A labor pool is defined as a business entity that operates a labor hall² by one or more of the following methods:

- Contracting with third-party users to supply day laborers to them on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill these contracts for temporary labor; or
- Fulfilling any contracts for day labor in accordance with the act, even if the entity also conducts other business.³

¹ Chapter 95-332, L.O.F.

² Section 448.22(3), F.S., defines a "labor hall" as a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.

³ Section 448.22(1), F.S. The act also specifically excludes certain businesses from its provisions: businesses registered as farm labor contractors; employee leasing companies; temporary help services that solely provide white collar employees,

The act limits the methods by which a day laborer may be paid to cash or commonly accepted negotiable instruments⁴ that are payable in cash, on demand at a financial institution, and without discount.⁵ The act prohibits a labor pool from charging a day laborer for directly or indirectly cashing the worker's check.⁶

Payment for Labor

Chapter 532, F.S., governs the issuance of payment for labor in this state. Under the law, payment for labor may be made by order, check, draft, note, memorandum, payroll debit card, or other acknowledgment of indebtedness issued in payment of wages and payable in cash, on demand, without discount, at an established place of business.⁷ It further requires the name and address of a business where a payroll debit card is negotiable on demand without discount to appear on the payroll debit card.

Payroll Debit Cards

More companies are using payroll debit cards to compensate their employees for their labor. The number of companies using this method to pay employees is expected to reach 10.8 million within the next 5 years.⁸ However, some consumer advocates warn that employees paid by these debit cards may be subjected to fees for transactions, such as withdrawals, balance inquiries, and point of sale purchases.⁹ Some of the payroll debit card issuers may also charge its cardholders overdraft and inactivity fees.

However, payroll debit cards may offer an individual who has limited or no access to a financial institution a safe and convenient way to receive her or his wages.¹⁰ The Consumers Union and the National Consumer Law Center has issued a Model State Payroll Card Law, which they feel offer a mutually beneficial payroll program for both employers and employees.¹¹ The model law includes such provisions as:

- Requirement of a voluntary written consent to receive payment by payroll card;

secretarial employees, clerical employees, or skilled laborers; labor union hiring halls; or labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use. *See* s. 448.23, F.S.

⁴ Section 673.1041(1), F.S., defines negotiable instrument as “an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it: (a) is payable to the bearer or to order at the time it is issued or first comes into possession of a holder; (b) is payable on demand or at a definite time; and (c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money...”

⁵ Section 448.24(2)(a), F.S.

⁶ Section 448.24(1)(c), F.S.

⁷ Section 532.01, F.S.

⁸ Sandra Pedicini, *More Companies Opt to Give Workers Payroll Debit Cards*, ORLANDO SENTINEL, Oct. 6, 2013, available at http://articles.orlandosentinel.com/2013-10-06/business/os-cfb-cover-payroll-cards-20131006_1_debit-cards-payroll-cards-such-cards (last visited Feb. 5, 2015).

⁹ *Id.* See also Jessica Silver-Greenberg and Stephanie Clifford, *Paid via Card, Workers Feel Sting of Fees*, NEW YORK TIMES, June 30, 2013, available at http://www.nytimes.com/2013/07/01/business/as-pay-cards-replace-paychecks-bank-fees-hurt-workers.html?pagewanted=all&_r=1& (last visited Feb. 5, 2015).

¹⁰ Press Release, American Payroll Association and National Consumer Law Center, *American Payroll Association, National Consumer Law Center Agree Payroll Cards Make Sense for Unbanked If Proper Guidelines Followed*, July 31, 2013, available at https://www.nclc.org/images/pdf/pr-reports/pr_effective-payroll-card2013.pdf (last visited Feb. 5, 2015).

¹¹ *Id.* See also Consumers Union and National Consumer Law Center, *Model State Payroll Card Law* (Feb. 2011), available at <http://consumersunion.org/wp-content/uploads/2013/02/Payroll-Model-Law.pdf> (last visited Feb. 5, 2015).

- The availability of wages without a fee at least once each pay period;
- A prohibition of certain other fees, such as fees for point of sale transactions, declined transactions, balance inquiry, and account activity;
- A provision of a periodic statement and transaction history;
- Requirement to disclose available payment options to the employee;
- A provision that allows an employee to change the wage payment method;
- A prohibition on linking the payroll card to any form of credit account or fee-based overdraft program; and
- A requirement that payroll card funds be placed in an FDIC or NCUA insured account.

Federal Payroll Card Regulations

The Electronic Funds Transfer Act (EFTA), Regulation E, governs the use of payroll card accounts.¹² The regulation outlines the requirements for financial institutions offering payroll credit accounts.¹³ The regulation provides instructions on providing account information to the consumer and general account information and disclosures. Additionally, financial institutions issuing payroll card accounts are instructed on limitations on liability for unauthorized account transactions that are timely reported. The regulation prohibits a financial institution or other person from requiring an individual to receive wages by electronic funds transfer with a particular institution, including payroll cards, as a condition of employment.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 448.24, F.S., to permit labor pools to pay a day laborer by payroll debit card or electronic funds transfer, in addition to the current options of payment by cash or a negotiable instrument that is payable in cash.

The bill provides that before the first pay period, a day laborer must be advised of the method of payment the labor pool uses, and the payment options available. A day laborer must be given the opportunity to opt out of receiving his or her wages by payroll debit card or electronic fund transfer.

If a labor pool opts to pay wages by payroll debit card, the labor pool must:

- Offer to provide wages by electronic fund transfer; and
- Prior to selecting to pay a day laborer by payroll debit card, provide a list of businesses in close proximity of the labor pool that will allow the day laborer to withdraw the contents of the payroll debit card without a fee.

¹² 12 C.F.R. s. 1005.2(b)(2). Payroll card account is defined as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person.”

¹³ 12 C.F.R. s. 1005.18. *See also*, Consumer Financial Protection Bureau, *Payroll Credit Accounts (Regulation E)*, CFPB Bulletin 2013-10 (Sept. 13, 2013), available at http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf (last visited Feb. 5, 2015).

¹⁴ 12 C.F.R. s. 1005.10(e)(2).

Current law requires a labor pool to provide the day laborer with a written, itemized statement of wages including all deductions made from his or her wages. The bill authorizes a labor pool to provide this itemized statement in an electronic format, upon written request of the day laborer.

Section 2 provides an effective date of July 1, 2015.

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:

An employee being paid by this method may be able to avoid or reduce check-cashing fees or other fees incurred for accessing wages, if the employee does not have access or has limited access to traditional banking services.

An employer may save costs associated with the issuance of a paper check.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define “close proximity.” Although the term is used in several statutes to delineate distance,¹⁵ only two provisions provide a definition.¹⁶ Section 627.736(7)(a), F.S., uses the term “area of the closest proximity.” This term was reviewed by the Fifth District Court of Appeal, which found this term to mean the same or closest metropolitan area.¹⁷

The bill requires that a day laborer be provided a list of locations where the contents of the debit card may be withdrawn without a fee. However, it is unclear whether the entire contents of the debit card must be withdrawn in a single occurrence to avoid a fee, or if multiple partial withdrawals are also allowed without a fee.

VIII. Statutes Affected:

This bill substantially amends section 448.24 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

¹⁵ For example, ss. 39.6012, 119.071, 163.3175, 310.101, 310.141, 331.310, 341.031, 380.0552, 403.7211, 561.01, and 856.022, F.S.

¹⁶ Sections 119.071(3)(c)5.b. and 561.01(18), F.S., include in the definition of “entertainment or resort complex” lodging, dining, and recreational facilities adjacent to, contiguous to, or in close proximity to a theme park. Close proximity is defined to include an area within a 5-mile radius of the theme park complex.

¹⁷ *Progressive American Insurance Co. v. Belcher*, 496 So.2d 841, 843 (Fla. 5th DCA 1986).

By Senator Braynon

36-00502B-15

2015456__

1 A bill to be entitled
 2 An act relating to labor pools; amending s. 448.24,
 3 F.S.; revising methods by which a labor pool is
 4 required to compensate day laborers; requiring a labor
 5 pool to provide certain notice before a day laborer's
 6 first pay period; specifying requirements for a labor
 7 pool that selects to compensate a day laborer by
 8 payroll debit card; authorizing a labor pool to
 9 deliver a wage statement electronically upon request
 10 by the day laborer; providing an effective date.

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

14 Section 1. Subsection (2) of section 448.24, Florida
 15 Statutes, is amended to read:

16 448.24 Duties and rights.—

17 (2) A labor pool shall:

18 (a) Select one of the following methods of payment to
 19 compensate a day laborer laborers for work performed: in the
 20 form of

21 1. Cash, ~~or~~

22 2. Commonly accepted negotiable instruments that are
 23 payable in cash, on demand at a financial institution, and
 24 without discount.

25 3. Payroll debit card.

26 4. Electronic fund transfer, which must be made to a
 27 financial institution designated by the day laborer.

28 (b) Before a day laborer's first pay period, provide notice
 29 to the day laborer of the method of payment that the labor pool

Page 1 of 3

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

36-00502B-15

2015456__

30 intends to use for payroll and the day laborer's options to
 31 elect a different method of payment, and authorize the day
 32 laborer to elect not to be paid by payroll debit card or
 33 electronic fund transfer.

34 (c) If selecting to compensate a day laborer by payroll
 35 debit card:

36 1. Offer the day laborer the option to elect payment by
 37 electronic fund transfer; and

38 2. Before selecting payroll debit card, provide the day
 39 laborer with a list, including the address, of a business that
 40 is in close proximity to the labor pool and that does not charge
 41 a fee to withdraw the contents of the payroll debit card.

42 (d) ~~(b)~~ Compensate day laborers at or above the minimum
 43 wage, in conformance with ~~the provision of~~ s. 448.01. ~~In no~~
 44 event ~~shall any~~ Deductions, other than those authorized
 45 ~~permitted~~ by federal or state law, may not bring the worker's
 46 pay below minimum wage for the hours worked.

47 (e) ~~(e)~~ Comply with all requirements of chapter 440.

48 (f) ~~(d)~~ Insure any motor vehicle owned or operated by the
 49 labor hall and used for the transportation of workers pursuant
 50 to Florida Statutes.

51 (g) ~~(e)~~ At the time of each payment of wages, furnish each
 52 worker a written itemized statement showing in detail each
 53 deduction made from such wages. A labor pool may deliver this
 54 statement electronically upon written request of the day
 55 laborer.

56 (h) ~~(f)~~ Provide each worker with an annual earnings summary
 57 within a reasonable period of time after the end of the
 58 preceding calendar year, but no later than February 1.

Page 2 of 3

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

36-00502B-15

2015456__

59

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/19/15

Bill Number (if applicable) 58456

Topic LABOR POOLS

Amendment Barcode (if applicable) _____

Name LARRY WILLIAMS

Job Title ATTORNEY

Address 215 SOUTH MOBILE ST SUITE 601

Phone 870 521 1980

Street TALLAHASSEE City FL State 32301 Zip

Email LWILLIAMS@GILUSTOR.COM

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

Representing TRUCKER

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General
Government, Vice Chair
Ethics and Elections
Health Policy
Higher Education
Regulated Industries
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR OSCAR BRAYNON II

Democratic Leader Pro Tempore
36th District

March 10, 2015

Senator David Simmons, Chair
Rules,
316 Senate Office
404 South Monroe Street
Tallahassee, FL 32399-1100

Handwritten note: 'Marked' with a checkmark

Dear Chair Simmons:

This letter is to request that Senate Bill #456, relating to Labor Pools be placed on the agenda of the next scheduled meeting of the committee.

SB 456: Labor Pools; Revising methods by which a labor pool is required to compensate day laborers; requiring a labor pool to provide certain notice before a day laborer's first pay period; specifying requirements for a labor pool that selects to compensate a day laborer by payroll debit card; authorizing a labor pool to deliver a wage statement electronically upon request by the day laborer, etc.

Thank you for consideration of this request.

Sincerely,

Handwritten signature of Oscar Braynon

Senator Braynon
District 36

cc. John Phelps, Staff Director,
Cissy DuBose, Committee Administrative Assistant, Room 402 SOB

REPLY TO:

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

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 570

INTRODUCER: Senator Dean

SUBJECT: Service of Process of Witness Subpoenas

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	Favorable
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 570 adds civil traffic cases to the types of court cases for which service of process may be made on a witness by United States mail.

Service of process of witness subpoenas may be made by United States mail in criminal traffic, misdemeanor, or second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least seven days before the witness's appearance is required.

II. Present Situation:

Service of Process

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term "to serve" means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff; i.e., a special process server or a certified process server. Special process servers and certified

¹ Sections 48.011 and 48.021, F.S.

² BLACK'S LAW DICTIONARY (10th ed. 2014).

³ BLACK'S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK'S LAW DICTIONARY (10th ed. 2014).

process servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.⁶

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁷

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least seven days before the appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.⁸ The process server must post the subpoena at least five days before the witness' required appearance.⁹

Civil Traffic Cases

A civil traffic case may result from a contest of a civil traffic citation, which may be for moving or nonmoving violations. Examples of moving violations include, but are not limited to:

- Speeding;¹⁰
- Failure to yield to highway construction workers;¹¹

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1) and (2), F.S.

⁷ Section 48.031(3)(a), F.S.

⁸ Section 48.031(3)(b), F.S.

⁹ Section 48.031(3)(b), F.S.

¹⁰ Section 316.183, F.S.

¹¹ Section 316.079, F.S.

- Failure to drive on the right side of the roadway;¹²
- Improper passing of vehicles;¹³
- Failing to signal before turning;¹⁴ and
- Following too closely.¹⁵

Examples of nonmoving violations include, but are not limited to:

- Parking violations;¹⁶
- Leaving a motor vehicle unattended;¹⁷
- Riding on the exterior of a vehicle;¹⁸
- Tearing, breaking down, or defacing any detour sign;¹⁹ and
- Failing to yield the right-of-way to a funeral procession.²⁰

A traffic infraction is a noncriminal violation that may require payment of a fine and community service hours, but is not punishable by incarceration. As such, the person charged does not have the right to a jury trial or court-appointed counsel.²¹

A person who commits a moving or nonmoving violation may receive a citation in person by a law enforcement officer; in the mail subsequent to detection of a traffic violation by a traffic infraction detector, commonly known as a red light camera;²² or in the mail subsequent to a toll violation.²³ A person who receives a traffic citation has the option to pay the civil penalty listed on a traffic citation, enter into a payment plan, or contest the citation at a hearing.²⁴

III. Effect of Proposed Changes:

The bill adds civil traffic cases to the list of court cases for which service of process may be made on a witness by United States mail.

Under existing law, service of process of witness subpoenas may be made by United States mail in criminal traffic, misdemeanor, or second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least seven days before the witness's appearance is required.

Civil traffic cases are less serious than criminal traffic, misdemeanor, and felony cases. However, current law allows witness subpoenas to be served by mail in these more serious cases, but not in civil traffic cases.

¹² Section 316.081, F.S.

¹³ Section 316.082, F.S.

¹⁴ Section 316.155, F.S.

¹⁵ Section 316.0895, F.S.

¹⁶ Sections 316.1945, 316.195, and 316.1951, F.S.

¹⁷ Section 316.1975, F.S.

¹⁸ Section 316.2015, F.S.

¹⁹ Section 316.078, F.S.

²⁰ Section 316.1974, F.S.

²¹ Section 318.13(3), F.S.

²² Section 316.0776, F.S.

²³ Section 316.1001, F.S.

²⁴ Section 318.14(4), F.S.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

As this bill authorizes service of process by mail for witness subpoenas in civil traffic cases, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

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:

A person who challenges a civil traffic citation bears the costs of service of process for witness subpoenas. The fee for in-person service of a witness subpoena is \$40.²⁵ Thus, by allowing witness subpoenas to be served by mail, the costs of challenging a civil traffic citation will decrease.

C. Government Sector Impact:

The may result in a cost savings for local sheriffs by giving them the option of serving witness subpoenas by mail for appearances in civil traffic cases.²⁶ This cost reduction occurs because the \$40 fee authorized in statute covers all attempts to serve in a particular case.

²⁵ Section 30.231(1)(c), F.S.

²⁶ Email correspondence with Matt Dunagan, Florida Sheriffs Association (Feb. 19, 2015).

Hillsborough County alone had to deliver 5,878 witness subpoenas in civil traffic cases last year. Hillsborough County estimates a cost savings from this bill of almost \$100,000 a year in manpower costs.²⁷

The Office of the State Courts Administrator anticipates a minimal fiscal impact from the bill.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²⁷ Email correspondence from Lorelei Bowden, Manager, Legislative Affairs and Grants, Hillsborough County Sheriff's Office (Feb. 27, 2015).

²⁸ Office of the State Courts Administrator, *2015 Judicial Impact Statement on SB 570* (Feb. 20, 2015).

By Senator Dean

5-00956A-15

2015570__

A bill to be entitled

An act relating to service of process of witness subpoenas; amending s. 48.031, F.S.; providing that service of a subpoena on a witness in a civil traffic case may be made by United States mail directed to the witness at the last known address and that such service must be mailed before a specified period; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 48.031, Florida Statutes, is amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(3) (a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a civil traffic case, a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/19/15

Bill Number (if applicable) 570

Topic Service of Process of Witness Subpoenas Amendment Barcode (if applicable)

Name Frank Greco

Job Title Lieutenant

Address 2008 E 8th Avenue

Phone 813 363-0375

Street Tampa City FL State 33605 Zip

Email L.Bouden@hcss.tampa.fl

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

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District

March 16, 2015

The Honorable David Simmons
400 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

3/19/15
OK
AMS

Dear Chairman Simmons:

Thank you for allowing Senate Bill 570, relating to Service of Process of Witness Subpoenas, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles S. Dean
State Senator, District 5

Cc: John 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 26th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District



March 13, 2015

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

Dear Chairman Simmons,

I respectfully request you place Senate Bill 570, relating to Service of Process on Witness Subpoenas, on your Rules Committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: John 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

ANDY GARDINER
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 182

INTRODUCER: Governmental Oversight and Accountability Committee; Higher Education Committee and Senator Hays

SUBJECT: Public Records and Meetings/Postsecondary Education Executive Search

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Scott</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 182 creates exemptions from Florida's public records and open meetings laws for any identifying information of an applicant for state university or Florida College System (FCS) institution president, provost, or dean. The bill provides that identifying information of an applicant is exempt from public records requirements. The bill also closes meetings where applicants and potential applicants are discussed. Meetings held for the purpose of establishing the qualifications of potential applicants or formulating the compensation framework to be offered to applicants will continue to be public. No later than 30 days before a final action or vote is taken on hiring finalists, information and meetings related to the finalists will be subject to public records and open meetings laws.

As required by the Open Government Sunset Review Act, the bill provides for repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. The bill also includes a statement of public necessity as required by the State Constitution.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ 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.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ 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 the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, 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.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The 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 necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the purpose of the exemption overrides the Florida’s public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does 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 section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

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

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

State University and Florida College Systems

Board of Governors and State University Boards of Trustees

The Board of Governors (BOG) has the authority to regulate the State University System pursuant to s. 7(d), Article IX of the State Constitution and the Florida Statutes.²⁰ The BOG may develop procedures for adopting regulations to implement its constitutional duties.²¹

Each state university is administered by a board of trustees, which is subject to public record and open meetings laws.²² The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.²³ The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.²⁴

State Board of Education and Florida College System Institution Boards of Trustees

The Legislature created the Florida College System consisting of institutions²⁵ governed by boards of trustees.²⁶ The State Board of Education establishes the standards and guidelines for Florida College System (FCS) institutions.²⁷

Each board of trustees is authorized to establish the personnel program for all employees of an FCS institution, including the president.²⁸ The established guidelines for the personnel program may include the recruitment, selection, or reappointment of personnel.²⁹ An FCS institution's board of trustees is authorized to appoint, suspend, or remove the president and may also appoint a search committee for the purpose of filling positions.³⁰

FSC institutions normally establish search committees for filling vacant president, provost and dean positions.³¹ The search committees may also utilize consultants to aid them in their search. Documentation held by a search committee or its consultants are public records, and all meetings of the search committee are open and noticed to the public.

²⁰ Sections 20.155 and 1001.70-1001.706, F.S. See s. 1001.705(a) and (d), F.S., defining the terms "Board of Governors" and "state universities" as used in the Florida K-20 Education Code.

²¹ Section 1001.706(2), F.S.

²² FLA. CONST. art. IX, s. 7(b) and (c); s. 1001.72(2), F.S.

²³ FLA. CONST. art. IX, s. 7(c); s. 1001.706(2)(b), F.S.

²⁴ Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.

²⁵ See s. 1000.21(3), F.S., for a definition and list of each "Florida College System institution." Such institutions constitute political subdivisions of the state operated by boards of trustees. See s. 1004.67 and ss. 1001.61-1001.64, F.S.

²⁶ Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S.; See Ch. 2008-52, s. 2, Laws of Fla.; See also, s. 20.15(7), F.S.

²⁷ FLA. CONST. art. IX, s. 2; ss. 20.15(1), (2), and (5); and ss. 1001.02(1) and (6), F.S.

²⁸ Section 1001.64(18), F.S.; See s. 1001.02(6)(a), F.S.

²⁹ Section 1001.64(18), F.S.

³⁰ Section 1001.64(19), F.S.

³¹ 2015 Legislative Bill Analysis from the State University System of Florida, Board of Governors for Bill Number SB 182, on file with the Committee on Education Pre-K-12.

III. Effect of Proposed Changes:

CS/CS/SB 182 creates exemptions from Florida's public records and open meetings laws for the identifying information of any individual who applies for president, provost, or dean at a state university or Florida College System (FCS) institution.

The bill makes the identities of applicants for president, provost, or dean at a state university or FSC exempt from public records and open meetings laws. Identifying information of an applicant contained in records are exempt from public disclosure. Any portion of a meeting at which potential applicants are identified or vetted are closed to the public. Any portion of a meeting which would disclose the identity of an applicant are also closed to the public. All closed meetings must be noticed to the public and recorded. No portion of the closed meeting may be off the record and the recording of a closed meeting is exempt from public disclosure. The bill provides that all records and recordings are exempt (and not confidential and exempt)³², the records custodian will have the discretion to release protected information if necessary.

The bill provides that if the purpose of a meeting is to discuss the qualifications or compensation framework for potential applicants, the meeting will be noticed and open to the public.

Once a group of finalists is established, the identifying information of the finalists will be subject to public disclosure 30 days before the final action or vote is taken. Likewise, 30 days before a final action or vote is taken, all meetings must be noticed and open to the public. The identities of anyone who was not a finalist will remain exempt from public disclosure.

As required by the State Constitution, the bill provides a statement of public necessity stating that protecting the names and other personal information of applicants for state university and FCS institution president, provost, or dean will encourage qualified candidates to apply without the fear of reprisal from their current employers. The public necessity statement provides that the Legislature finds that the failure to have these exemptions in place could have a chilling effect on the number and quality of the pool of candidates for president, provost or dean.

Also, as required by the Open Government Sunset Review Act, the bill provides for the repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill provides an effective date of October 1, 2015.

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 of each house of the Legislature for final passage of a bill that creates an exemption for

³² See footnote 8.

public records or open meetings. The bill creates exemptions; thus, a two-thirds vote of the members of each house of the Legislature is required for final passage of the bill.

Article I, s. 24(c) of the State Constitution requires that a bill creating an exemption for public records or open meetings contain a public necessity statement justifying the exemption. The bill contains 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:**

None.

VIII. **Statutes Affected:**

This bill creates section 1004.097 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 4, 2015:

The CS/CS makes the following changes:

- Reorganizes the bill for clarity.
- Replaces “personal identifying information” with identifying information.
- Provides that records are exempt and not confidential and exempt.
- Provides that closed meetings must be recorded and makes the recording exempt from public records.

- Clarifies that the records of finalists and meetings regarding finalists must be open to the public 30 days before a final vote or action is taken.
- Conforms the public necessity statement to the rest of the bill.

CS by Higher Education on February 16, 2015:

The committee substitute maintains the original substance of SB 182 with the following modifications:

- Clarifies that personal identifying information includes the name of any applicant for president, provost, or dean of a state university or Florida College System institution.
- Clarifies that any portion of a meeting held for the purpose of identifying and vetting applicants is exempt from Article I, s. 24(b) of the State Constitution and s. 286.011(1), F.S.
- Adds a provision requiring that reasonable notice be provided for any portion of a meeting that is otherwise exempt from Article I, s. 24(b) of the State Constitution and s. 286.011(1), F.S.

B. Amendments:

None.



786806

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/19/2015	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 104

and insert:

1004.097 Information identifying applicants for president or provost at state universities or Florida College System institutions; public records exemption; public meetings exemption.-

(1) Any identifying information of an applicant for president or provost of a state university or Florida College System institution is exempt from s. 119.07(1) and s. 24(a),



786806

12 Art. I of the State Constitution.

13 (2) (a) Any portion of a meeting held for the purpose of
14 identifying or vetting a potential applicant for president or
15 provost of a state university or Florida College System
16 institution is exempt from s. 286.011 and s. 24(b), Art. I of
17 the State Constitution.

18 (b) Any portion of a meeting that would disclose
19 identifying information of an applicant for president or provost
20 of a state university or Florida College System institution is
21 exempt from s. 286.011 and s. 24(b), Art. I of the State
22 Constitution.

23 (c) Any portion of a meeting that is closed pursuant to
24 paragraph (a) or paragraph (b) must be reasonably noticed. A
25 complete recording must be made of any closed portion of a
26 meeting, and a closed portion of a meeting may not be held off
27 the record. The recording of the closed portion of a meeting is
28 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
29 Constitution.

30 (d) Any portion of a meeting held for the purposes of
31 establishing the qualifications of potential applicants or
32 establishing the compensation framework to be offered to
33 potential applicants must be open to the public and is subject
34 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

35 (3) No later than 30 days before the date of the meeting at
36 which a final action or vote is to be taken regarding the
37 employment of an applicant, identifying information of the
38 applicants on whom a final action or vote is to be taken is no
39 longer exempt as provided under subsections (1) and (2).

40 (4) This section is subject to the Open Government Sunset



786806

41 Review Act in accordance with s. 119.15 and shall stand repealed
42 on October 2, 2020, unless reviewed and saved from repeal
43 through reenactment by the Legislature.

44 Section 2. The Legislature finds that it is a public
45 necessity that any identifying information of an applicant for
46 president or provost of a state university or Florida College
47 System institution be exempt from s. 119.07(1), Florida
48 Statutes, and s. 24(a), Article I of the State Constitution. The
49 Legislature also finds that any portion of any meeting which is
50 held for the purpose of identifying or vetting applicants for
51 president or provost of a state university or Florida College
52 System institution or which would disclose identifying
53 information of an applicant be exempt from s. 286.011, Florida
54 Statutes, and s. 24(b), Article I of the State Constitution.
55 Identifying information of finalists is no longer exempt from
56 public records and public meetings requirements 30 days before
57 the date of the meeting at which a final action or vote occurs
58 regarding the hiring of a president or provost. The task of
59 filling the position of president or provost of a state
60 university or Florida College System institution is often
61 conducted by an executive search committee. Many, if not most,
62 applicants for such a position are currently employed at another
63 job at the time they apply and disclosure of their applications
64 could jeopardize their current positions. These exemptions from
65 public records and public meeting requirements are needed to
66 ensure that the executive search committee can avail itself of
67 the most experienced and desirable pool of qualified applicants
68 from which to fill the position of president or provost of a
69 state university or Florida College System institution. If



786806

70 potential applicants fear the possibility of losing their
71 current employment as a consequence of attempting to progress
72 along their chosen career path or seeking different and more
73 rewarding employment, failure to have these exemptions in place
74 could have a chilling effect on the number and quality of
75 applicants available to fill the position of president or
76 provost of a state university or Florida College System
77 institution.

78
79 ===== T I T L E A M E N D M E N T =====

80 And the title is amended as follows:

81 Delete lines 4 - 12

82 and insert:

83 from public records requirements for identifying
84 information of an applicant for president or provost
85 of a state university or Florida College System
86 institution; providing an exemption from public
87 meeting requirements for any portion of a meeting
88 which is held for the purpose of identifying or
89 vetting, or which would otherwise disclose identifying
90 information of, potential applicants for president or
91 provost; requiring that closed meetings be



576962

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/19/2015	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment

Delete line 66
and insert:
longer exempt as provided under subsections (1) and (2).

By the Committees on Governmental Oversight and Accountability;
and Higher Education; and Senator Hays

585-01921-15

2015182c2

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 1004.097, F.S.; providing an exemption
4 from public records requirements for identifying
5 information of an applicant for president, provost, or
6 dean of a state university or Florida College System
7 institution; providing an exemption from public
8 meeting requirements for any portion of a meeting
9 which is held for the purpose of identifying or
10 vetting, or which would otherwise disclose identifying
11 information of, potential applicants for president,
12 provost, or dean; requiring that closed meetings be
13 reasonably noticed and be recorded; providing that the
14 recordings of closed portions of a meeting are exempt
15 from public records requirements; specifying that any
16 portion of a meeting held for the purpose of
17 establishing the qualifications of, or any
18 compensation framework to be offered to, potential
19 applicants are subject to public meetings
20 requirements; specifying that the identifying
21 information of final applicants is no longer exempt
22 from public records and public meetings requirements
23 for a minimum period before a final decision or vote;
24 providing for future legislative review and repeal of
25 the exemptions; providing a statement of public
26 necessity; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29

Page 1 of 4

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

585-01921-15

2015182c2

30 Section 1. Section 1004.097, Florida Statutes, is created
31 to read:
32 1004.097 Information identifying applicants for president,
33 provost, or dean at state universities or Florida College System
34 institutions; public records exemption; public meetings
35 exemption.-
36 (1) Any identifying information of an applicant for
37 president, provost, or dean of a state university or Florida
38 College System institution is exempt from s. 119.07(1) and s.
39 24(a), Art. I of the State Constitution.
40 (2) (a) Any portion of a meeting held for the purpose of
41 identifying or vetting a potential applicant for president,
42 provost, or dean of a state university or Florida College System
43 institution is exempt from s. 286.011 and s. 24(b), Art. I of
44 the State Constitution.
45 (b) Any portion of a meeting that would disclose
46 identifying information of an applicant for president, provost,
47 or dean of a state university or Florida College System
48 institution is exempt from s. 286.011 and s. 24(b), Art. I of
49 the State Constitution.
50 (c) Any portion of a meeting that is closed pursuant to
51 paragraph (a) or paragraph (b) must be reasonably noticed. A
52 complete recording must be made of any closed portion of a
53 meeting, and a closed portion of a meeting may not be held off
54 the record. The recording of the closed portion of a meeting is
55 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
56 Constitution.
57 (d) Any portion of a meeting held for the purposes of
58 establishing the qualifications of potential applicants or

Page 2 of 4

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

585-01921-15 2015182c2

59 establishing the compensation framework to be offered to
 60 potential applicants must be open to the public and is subject
 61 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

62 (3) No later than 30 days before the date of the meeting at
 63 which a final action or vote is to be taken regarding the
 64 employment of an applicant, identifying information of the
 65 applicants on whom a final action or vote is to be taken is no
 66 longer exempt as provided under subsection (2).

67 (4) This section is subject to the Open Government Sunset
 68 Review Act in accordance with s. 119.15 and shall stand repealed
 69 on October 2, 2020, unless reviewed and saved from repeal
 70 through reenactment by the Legislature.

71 Section 2. The Legislature finds that it is a public
 72 necessity that any identifying information of an applicant for
 73 president, provost, or dean of a state university or Florida
 74 College System institution be exempt from s. 119.07(1), Florida
 75 Statutes, and s. 24(a), Article I of the State Constitution. The
 76 Legislature also finds that any portion of any meeting which is
 77 held for the purpose of identifying or vetting applicants for
 78 president, provost, or dean of a state university or Florida
 79 College System institution or which would disclose identifying
 80 information of an applicant be exempt from s. 286.011, Florida
 81 Statutes, and s. 24(b), Article I of the State Constitution.
 82 Identifying information of finalists is no longer exempt from
 83 public records and public meetings requirements 30 days before
 84 the date of the meeting at which a final action or vote occurs
 85 regarding the hiring of a president, provost, or dean. The task
 86 of filling the position of president, provost, or dean of a
 87 state university or Florida College System institution is often

Page 3 of 4

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

585-01921-15 2015182c2

88 conducted by an executive search committee. Many, if not most,
 89 applicants for such a position are currently employed at another
 90 job at the time they apply and disclosure of their applications
 91 could jeopardize their current positions. These exemptions from
 92 public records and public meeting requirements are needed to
 93 ensure that the executive search committee can avail itself of
 94 the most experienced and desirable pool of qualified applicants
 95 from which to fill the position of president, provost, or dean
 96 of a state university or Florida College System institution. If
 97 potential applicants fear the possibility of losing their
 98 current employment as a consequence of attempting to progress
 99 along their chosen career path or seeking different and more
 100 rewarding employment, failure to have these exemptions in place
 101 could have a chilling effect on the number and quality of
 102 applicants available to fill the position of president, provost,
 103 or dean of a state university or Florida College System
 104 institution.

105 Section 3. This act shall take effect October 1, 2015.

Page 4 of 4

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)

Meeting Date 3-19-15

Bill Number (if applicable) 182

Topic Public Records/Meetings Exemptions

Amendment Barcode (if applicable) 786806

Name Marshall Ogletree

Job Title Interim Executive Director

Address 306 E. Park Avenue

Phone (850) 224-8220

City Tallahassee State FL Zip 32301

Email marshall.ogletree@Purdue.edu

Speaking: For Against Information

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

Representing United Faculty of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-19-15

Bill Number (if applicable) 182

Topic Public Records/Meetings Exemptions

Amendment Barcode (if applicable)

Name Marshall Ogletree

Job Title Interim Executive Director

Address 306 E Park Ave

Phone (850)224-8220

Street Tallahassee City Fl State 32309 Zip

Email marshall.ogletree@floridacourts.org

Speaking: For Against Information

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

Representing United Faculty of Florida

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/15

Meeting Date

SB 182

Bill Number (if applicable)

Topic PUBLIC RECORDS - SECURITY IN UNIVERSITY SEARCHES

Amendment Barcode (if applicable)

Name NANCY ROGERS

Job Title ASSOC. PROFESSOR

Address 2069 WUNDERLICH DRIVE

Phone 850-562-2733

Street TALMADGE

City FL

State 32303

Zip Nancy-m-rogers@yahoo.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Bill Number (if applicable) SB 182

Topic Sunshine Law / Universities

Amendment Barcode (if applicable) _____

Name Rid Templin

Job Title _____

Address 135 S. Monroe

Phone 856-224-6926

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3-19-15

Bill Number (if applicable) 182

Topic Public Records/Mootings Exemption

Amendment Barcode (if applicable)

Name Dr Jennifer Proffitt

Job Title President, FSU Chapter United Faculty of Florida

Address 307 Chestnut Dr

Phone 445 0373

Street Tallahassee City FL State 32301 Zip

Email jennifer.proffitt@gmail.com

Speaking: For Against Information

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

Representing Self

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/2015
Meeting Date

SB 182
Bill Number (if applicable)

Topic Sunshine Exemption For University Seals

Amendment Barcode (if applicable)

Name Lalvey

Job Title Graduate Teaching Assistant / Student

Address 3816 Lost Lane #32

Phone

Street Tallahassee City FL State 32309 Zip

Email

Speaking: For Against Information

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

Representing FSU Progress Coalition

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-19-15

Meeting Date

Bill Number (if applicable) SB 182

Topic Public Records & Meetings Postsecondary Education Excellence Amendment Barcode (if applicable)

Name Jeanne Cannon

Job Title Retired

Address 3410-50th St N

Phone 941-812-7113

Street Bradenton, FL City 34209 State Zip

Email jeanne24@aol.com

Speaking: For Against Information

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

Representing myself

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 03-19-2015

Topic "The Secretary Bill"

Bill Number SB 182
(if applicable)

Name Katherine J. Hiley

Amendment Barcode _____
(if applicable)

Job Title Postal Clerk

Address 657 Sweetbriar Drive

Phone 813-748-5467

Street
Oldsmar Florida 34677
City State Zip

E-mail Kathyhiley@yahoo.com

Speaking: For Against Information

Representing Self

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-19-2015

Meeting Date

Bill Number (if applicable) SB 182

Bill Number (if applicable)

Topic Public Records Meetings

Amendment Barcode (if applicable)

Name M. Dolores Kelly

Job Title

Address P.O. Box 1677

Phone 352-603-1149

Street Brushwell Dr

City

State FL

Zip

Email

Speaking: For Against Information

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

Representing Self

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-19-15

SB 182

Meeting Date

Bill Number (if applicable)

Topic SB 182

Amendment Barcode (if applicable)

Name NAMM LUPO

Job Title FL. CITIZEN / PROUD VETERAN

Address 2932 HEATHEN

Phone

Street

ALBANY WATSON

FL

33761

Email

City

State

Zip

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3-19-15

Bill Number (if applicable) SB182

Topic _____

Amendment Barcode (if applicable) _____

Name LORI Bell

Job Title representing myself

Address 21150 Gertrude Ave R2

Phone 9418156042

Street Port Charlotte
City FL State FL Zip 33952

Email loriebell58@gmail

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

Representing _____

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/19/15

Bill Number (if applicable) ~~##~~ 182

Topic Anti-Sunshine

Amendment Barcode (if applicable)

Name David Bryant

Job Title Electrician

Address 8853 Athor Ln.

Phone 904-928-3744

Street Jacksonville State FL. Zip 32216

Email

Speaking: For Against Information

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

Representing Self

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

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

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

THE FLORIDA SENATE APPEARANCE RECORD

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

Meeting Date 3-19-15

Bill Number (if applicable) 5B182

Amendment Barcode (if applicable) _____

Topic Public Records

Name Garen Houston

Job Title Coordinator

Address 237 Lemon St

Street Deer City FL State FL Zip 32922

Phone 321-205-1989

Email m2kahn@aol.com

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

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

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

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

THE FLORIDA SENATE APPEARANCE RECORD

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

Meeting Date 3-19-15

Bill Number (if applicable) SPB0182

Topic _____

Amendment Barcode (if applicable) _____

Name Carol Horton

Job Title Public School Teacher

Address 5954 Triphammer Road

Phone 501-762-7635

Street Lake Worth City FL State 33463 Zip

Email hsch14@bellsouth.net

Speaking: For Against Information

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

Representing myself

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/19/15

Bill Number (if applicable) SB 0182

Topic Public Records and Meetings Postsecondary Ed.

Amendment Barcode (if applicable) _____

Name Ngoc Nguyen

Job Title Teacher

Address 20930 Springs Ter.

Phone 561-306-2528

Street Boca Raton State FL Zip 33428

Email mynga211@yahoo.com

Speaking: For Against Information

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

Representing myself / Florida constituent

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3-17-15

Bill Number (if applicable) SR182

Topic Public Records in Education

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Officer

Address 1130 Crestview Ave

Phone 850 322-7595

Street Tallahassee City FL State FL Zip 32303

Email Amydatz@gmail.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/18/15

Bill Number (if applicable) SB 1182

Topic Dunshine Law Exemption

Amendment Barcode (if applicable) _____

Name Patricia Ingle

Job Title Citizen

Address 3509 NW 22nd Dr.

Phone 352-231-3647

Street Gainesville State FL Zip 32605
City

Email Mama_fish@netmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-19-15

Bill Number (if applicable) 182

Topic Public Meetings

Amendment Barcode (if applicable)

Name James Fogle

Job Title Electrician

Address 3509 NW 22nd Dr

Phone 901-453-4800

Street Gainsville State FL Zip 32605

Email

Speaking: For Against Information In Support Against

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

Representing Myself

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator David Simmons, Chair
Rules Committee
CC: John B. Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 182 – Public Records and Meetings/Postsecondary Education
Executive Search

Date: March 4, 2015

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

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, 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 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
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/CS/SB 342

INTRODUCER: Rules Committee; Criminal Justice Committee; Judiciary Committee; and Senator Simmons

SUBJECT: No Contact Orders

DATE: March 20, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 342 defines what is meant by an order of no contact in a court order granting the pretrial release of a criminal defendant.

Under current law, when a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One mandatory condition of pretrial release is that the defendant have no contact with the victim.

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. The defendant will receive a copy of the order of no contact before he or she is released from custody on pretrial release under the provisions of the bill.

Under the bill, a defendant who is ordered to have “no contact” generally may not:

- Communicate orally or in writing with the victim in any manner, in person, telephonically, or electronically directly or through a third person, other than through an attorney and for lawful purposes;
- Have physical or violent contact with the victim or other person identified in the order or his or her property;

- Be within 500 feet of the victim's or other identified person's residence, even if the defendant and victim or other named person share the residence; and
- Be within 500 feet of the victim's or other identified person's vehicle, place of work, or a specified place frequented regularly by either of them.

II. Present Situation:

Bail Determination

The Florida Constitution creates a presumption in favor of release for a defendant charged with a crime and who is detained pending resolution of the charge. Section 14, Article I of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime ... shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm ..., assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The pretrial release provision in Florida Rule of Criminal Procedure 3.131 contains language identical to that of the state constitution.

In setting reasonable conditions for pretrial release as required by the Florida Constitution, a court must set conditions:

- Ensuring the appearance of the criminal defendant in court; and
- Protecting the community from unreasonable danger.¹

In determining whether to grant a pretrial release or set conditions of pretrial release, a court must consider:

- The nature and circumstances of the offense charged;
- The weight of evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear in court;
- The nature and probability of danger from release;
- The source of funds used to post bail;
- Whether the defendant is already on release for another criminal charge or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether probable cause exists that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;

¹ Section 903.046(1), F.S.

- Whether the crime charged is gang-related or alleged to be subject to enhanced punishment due to gang involvement under ch. 874, F.S.;
- Whether the defendant is required to register as a sexual offender or predator; and
- Whether a burglary is reclassified based on a person intending to cross county lines in the commission of a burglary to reduce the ability of a law enforcement officer to track stolen goods.²

When granting pretrial release the court must impose, at minimum, the statutory conditions of pretrial release. These conditions are that the defendant:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery; and
- Comply with all conditions of pretrial release.³

Injunction for Domestic Violence

Domestic violence is any assault or aggravated assault, battery or aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one person which is caused by a family or household member.⁴ A victim of domestic violence or a person who has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence may file a petition for an injunction for protection against domestic violence.⁵

Section 741.31, F.S., provides that a person who violates an injunction for protection against domestic violence commits a first degree misdemeanor. A court will consider a person to have violated a protective injunction if he or she commits any of the following acts:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of domestic violence against the victim;
- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.⁶

Filing a motion for a domestic violence injunction is at the discretion of the victim. A victim of domestic violence might not pursue an injunction based on fear or other reasons. In these situations, a defendant on pretrial release is subject only to the more general "no contact" prohibition which applies to all pretrial release cases involving a victim. Whether a court or a

² Section 903.046(2), F.S.

³ Section 903.047(1), F.S.

⁴ Section 741.28(2), F.S.

⁵ Section 741.30(1), F.S.

⁶ Section 741.31(4)(a), F.S.

law enforcement officer would interpret the general “no contact” prohibition to include nonphysical contact, such as harassing phone calls or other forms of intimidation is unknown.

III. Effect of Proposed Changes:

When a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions required by statute is that the defendant have no contact with the victim.

Although current law requires a defendant to “refrain from contact of any type with the victim,” this concept is not defined in law. The bill defines what is meant by the condition of no contact, and includes various forms of nonphysical contact in the definition. Also, the bill prohibits a defendant from contacting others named in the court order, not just the victim.

Under the bill, acts prohibited by a no contact order specifically include:

- Communicating orally or in writing with the victim in any manner, in person, telephonically, electronically or through a third person, other than through an attorney and for lawful purposes or through an appropriate third person authorized by the court to serve as a contact for child visitation if the victim and the defendant have children in common;
- Having physical or violent contact with the victim or other person named in the order or his or her property;
- Being within 500 feet of the victim’s or other named person’s residence, even if the defendant and victim or other named person share the residence; and
- Being within 500 feet of the victim’s or other named person’s vehicle, place of work, or a specified place frequented regularly by the person.

The bill does not limit the authority of the court to impose additional conditions of pretrial release or the court’s authority to modify the conditions of a no contact order when appropriate. The defendant will receive a copy of the order of no contact before he or she is released from custody on pretrial release under the provisions of the bill.

The way that the bill defines “no contact” is similar to the provisions that constitute a violation of an injunction for domestic violence. In instances in which a victim of domestic violence does not pursue an injunction, the defendant will still be subject to similar prohibited acts of “no contact.”

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. By providing for immediate effect of a no contact order, a detainee, for example, would be prevented from making harassing phone calls to the victim while in jail awaiting a pretrial release.

The bill takes effect October 1, 2015.

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

This bill does not affect cities or counties. Additionally, the bill relates to criminal law, specifically pretrial detention, which is exempt from the limitations on the power of the Legislature to enact mandates.

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:

The Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release. However, OSCA cannot accurately determine the fiscal impact of the legislation due to the unavailability of data needed to determine its impact on judicial workloads. Nevertheless, OSCA anticipates that the impact of the bill will be manageable within its existing resources.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.047 of the Florida Statutes.

⁷ Office of the State Courts Administrator, *2015 Judicial Impact Statement, SB 342* (Feb. 2, 2015); on file with the Senate Judiciary Committee.

This bill reenacts the following sections of the Florida Statutes: 741.29, 784.046, and 901.15.

IX. Additional Information:

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

CS/CS/CS by Rules on March 19, 2015:

Provides an exception in orders of no contact as a condition of pretrial release. If the victim and the defendant have children in common, at the request of the defendant, the court may designate an appropriate third person to contact the victim solely to facilitate the defendant's contact with the children.

CS/CS by Criminal Justice on March 10, 2015:

Provides that the defendant will receive a copy of the court's order of no contact, which specifies the applicable prohibited acts, before the defendant is released from custody on pretrial release.

CS by Judiciary on February 17, 2015:

Creates an exception to the list of prohibited acts in a "no contact" order to allow contact by an attorney for the defendant with a victim or other person named in the order for lawful purposes.

- B. **Amendments:**

None.



918260

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2015	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment

Delete line 37
and insert:
victim or any other person named in the order. If the victim and
the defendant have children in common, at the request of the
defendant, the court may designate an appropriate third person
to contact the victim for the sole purpose of facilitating the
defendant's contact with the children. However, this

By the Committees on Criminal Justice; and Judiciary; and
Senator Simmons

591-02094-15

2015342c2

1 A bill to be entitled
2 An act relating to no contact orders; amending s.
3 903.047, F.S.; providing for the effect and
4 enforceability of orders of no contact as a part of
5 pretrial release; requiring that the defendant receive
6 a copy of the order of no contact prior to release;
7 specifying acts prohibited by a no contact order;
8 reenacting ss. 741.29(6), 784.046(13) and (15), and
9 901.15(13), F.S., relating to domestic violence,
10 repeat, sexual, or dating violence, and arrest without
11 a warrant, respectively, to incorporate the amendment
12 made to s. 903.047, F.S., in references thereto;
13 providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 903.047, Florida Statutes, is amended to
18 read:

19 903.047 Conditions of pretrial release.—

20 (1) As a condition of pretrial release, whether such
21 release is by surety bail bond or recognizance bond or in some
22 other form, the defendant ~~must~~ shall:

23 (a) Refrain from criminal activity of any kind.

24 (b) Refrain from any contact of any type with the victim,
25 except through pretrial discovery pursuant to the Florida Rules
26 of Criminal Procedure. An order of no contact is effective
27 immediately and enforceable for the duration of the pretrial
28 release or until it is modified by the court. The defendant
29 shall receive a copy of the order of no contact which specifies

Page 1 of 4

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

591-02094-15

2015342c2

30 the applicable prohibited acts before the defendant is released
31 from custody on pretrial release. As used in this section,
32 unless otherwise specified by the court, the term "no contact"
33 includes the following prohibited acts:

34 1. Communicating orally or in any written form, either in
35 person, telephonically, electronically, or in any other manner,
36 either directly or indirectly through a third person, with the
37 victim or any other person named in the order. However, this
38 subparagraph does not prohibit an attorney for the defendant,
39 consistent with rules regulating The Florida Bar, from
40 communicating with any person protected by the no contact order
41 for lawful purposes.

42 2. Having physical or violent contact with the victim or
43 other named person or his or her property.

44 3. Being within 500 feet of the victim's or other named
45 person's residence, even if the defendant and the victim or
46 other named person share the residence.

47 4. Being within 500 feet of the victim's or other named
48 person's vehicle, place of employment, or a specified place
49 frequented regularly by such person.

50 (c) Comply with all conditions of pretrial release.

51 (2) Upon motion by the defendant when bail is set, or upon
52 later motion properly noticed pursuant to law, the court may
53 modify the condition required by paragraph (1)(b) if good cause
54 is shown and the interests of justice so require. The victim
55 shall be permitted to be heard at any proceeding in which such
56 modification is considered, and the state attorney shall notify
57 the victim of the provisions of this subsection and of the
58 pendency of any such proceeding.

Page 2 of 4

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

591-02094-15

2015342c2

59 Section 2. For the purpose of incorporating the amendment
60 made by this act to section 903.047, Florida Statutes, in a
61 reference thereto, subsection (6) of section 741.29, Florida
62 Statutes, is reenacted to read:

63 741.29 Domestic violence; investigation of incidents;
64 notice to victims of legal rights and remedies; reporting.—

65 (6) A person who willfully violates a condition of pretrial
66 release provided in s. 903.047, when the original arrest was for
67 an act of domestic violence as defined in s. 741.28, commits a
68 misdemeanor of the first degree, punishable as provided in s.
69 775.082 or s. 775.083, and shall be held in custody until his or
70 her first appearance.

71 Section 3. For the purpose of incorporating the amendment
72 made by this act to section 903.047, Florida Statutes, in a
73 reference thereto, subsections (13) and (15) of section 784.046,
74 Florida Statutes, are reenacted to read:

75 784.046 Action by victim of repeat violence, sexual
76 violence, or dating violence for protective injunction; dating
77 violence investigations, notice to victims, and reporting;
78 pretrial release violations; public records exemption.—

79 (13) Whenever a law enforcement officer determines upon
80 probable cause that an act of dating violence has been committed
81 within the jurisdiction, or that a person has violated a
82 condition of pretrial release as provided in s. 903.047 and the
83 original arrest was for an act of dating violence, the officer
84 may arrest the person or persons suspected of its commission and
85 charge such person or persons with the appropriate crime. The
86 decision to arrest and charge shall not require consent of the
87 victim or consideration of the relationship of the parties.

Page 3 of 4

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

591-02094-15

2015342c2

88 (15) A person who willfully violates a condition of
89 pretrial release provided in s. 903.047, when the original
90 arrest was for an act of dating violence as defined in this
91 section, commits a misdemeanor of the first degree, punishable
92 as provided in s. 775.082 or s. 775.083, and shall be held in
93 custody until his or her first appearance.

94 Section 4. For the purpose of incorporating the amendment
95 made by this act to section 903.047, Florida Statutes, in a
96 reference thereto, subsection (13) of section 901.15, Florida
97 Statutes, is reenacted to read:

98 901.15 When arrest by officer without warrant is lawful.—A
99 law enforcement officer may arrest a person without a warrant
100 when:

101 (13) There is probable cause to believe that the person has
102 committed an act that violates a condition of pretrial release
103 provided in s. 903.047 when the original arrest was for an act
104 of domestic violence as defined in s. 741.28, or when the
105 original arrest was for an act of dating violence as defined in
106 s. 784.046.

107 Section 5. This act shall take effect October 1, 2015.

Page 4 of 4

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)

3/19/15
Meeting Date

SB 342
Bill Number (if applicable)

918 260
Amendment Barcode (if applicable)

Topic _____

Name Robert Trammell

Job Title Gen Counsel

Address PO Box 1799

Street

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing FL Public Defenders

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/19/15

Bill Number (if applicable) 342

Topic No Contact Orders

Amendment Barcode (if applicable)

Name Lessa Wiseman

Job Title Director, Communications & Government Affairs

Address 425 Office Plaza Dr

Phone 850/425-2749

Street Tallahassee City FL State 32301 Zip

Email wiseman.lesae@adv.org

Speaking: For Against Information

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

Representing Florida Coalition Against Domestic Violence

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 10, 2015

I respectfully request that **Senate Bill 342**, relating to No Contact Orders, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

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 1312

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Strategic Lawsuits Against Public Participation

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Wiehle</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1312 does two things:

- It adds protection of “free speech in connection with public issues” to the statute prohibiting certain strategic lawsuits against public participation (SLAPP), defining the term “free speech in connection with public issues” as any written or oral statement that is protected under applicable law and is made:
 - Before a governmental entity in connection with an issue under consideration or review by a governmental entity, or
 - In connection with the publication of a play, movie broadcast, or other similar work of art.
- It includes a person¹ in the prohibition against bringing a SLAPP suit and in the provisions for expedited resolution of a lawsuit claimed to be a SLAPP suit.

II. Present Situation:

A strategic lawsuit against public participation (SLAPP) is one ostensibly brought to redress a wrong, such as an invasion of privacy, a business tort, or an interference with a contract or an economic advantage, but actually brought to silence one or more critics.² Because of the variety

¹ The word “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

² See, e.g., The Florida Senate Committee on Judiciary, Issue Brief 2009-332, Strategic Lawsuits Against Public Participation, October 2008, http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-332ju.pdf; Cornell University Law School, SLAPP suit definition, https://www.law.cornell.edu/wex/slapp_suit; Public

of nominal bases for a SLAPP suit, laws to prevent them, known as anti-SLAPP laws, are phrased in terms of rights to be protected.

Florida's anti-SLAPP statute protects the right of Florida's citizens to exercise their rights to peacefully assemble, instruct their representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Article I of the State Constitution.^{3, 4} The SLAPP-suit prohibition applies only to suits brought by government entities.

Specifically, the statute prohibits a governmental entity in this state from filing or causing to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a person or entity without merit and solely because such person or entity has exercised the right to peacefully assemble, the right to instruct representatives, and the right to petition for redress of grievances before the various governmental entities of this state.

The statute also provides a right to an expeditious resolution of a claim that a suit has been filed in violation of this section. The person or entity sued by a governmental entity may petition the court for an order dismissing the action or granting final judgment in favor of that person or entity. As soon as practicable, the court must set a hearing on the petitioner's motion, which must be held at the earliest possible time after the filing of the governmental entity's response. If the petitioner prevails, the court may award actual damages arising from the governmental entity's violation of this act. The court must award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

III. Effect of Proposed Changes:

CS/SB 1312 does two things:

- It adds protection of “free speech in connection with public issues” to the anti-SLAPP suit statute, defining the term “free speech in connection with public issues” as any written or oral statement that is protected under applicable law and is made:
 - Before a governmental entity in connection with an issue under consideration or review by a governmental entity, or
 - In connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.
- It includes a person in the prohibition against bringing a SLAPP suit and in the provisions for expedited resolution of a lawsuit claimed to be a SLAPP suit.

Participation Project, FAQs about SLAPPs, <http://www.anti-slapp.org/slappdash-faqs-about-slapps/>; Strategic Lawsuits against Public Participation, <http://legal-dictionary.thefreedictionary.com/Strategic+Lawsuits+against+Public+Participation>; and Reporters Committee for Freedom of the Press, Anti-SLAPP laws, <http://www.rcfp.org/browse-media-law-resources/digital-journalists-legal-guide/anti-slapp-laws-0>.

³ Section 768.295, F.S., the Citizen Participation in Government Act.

⁴ There are also narrower statutes prohibiting SLAPP suits against a condominium unit owner or a parcel owner within a homeowners' association without merit and solely because such owner has exercised the right to instruct their representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Article I of the State Constitution. ss. 718.1224 and 720.304, F.S., respectively. These statutes also provide for expeditious resolution of a claim that the suit is in violation of these sections and prohibit condominium associations or homeowners' associations from expending association funds in prosecuting a SLAPP suit against a property owner.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons and entities may be better protected against the expenses of defending a SLAPP suit.

C. Government Sector Impact:

To the extent that the bill results in quicker, more efficient resolution of SLAPP suits, it may reduce costs to the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Due to the disjunctive structure of the definition of “free speech in connection with public issues,” the bill appears to give additional protections to speech solely because the speech is made through designated forms of media. The bill does not appear to require that speech made through these forms of media relate to a “public issue.” If the Legislature intends to link the speech protections provided in the bill to the discussion of public issues or participation in government, it may wish to revise the bill accordingly.

VIII. Statutes Affected:

This bill substantially amends section 768.295 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 Judiciary on March 10, 2015:

- Expands the list of types of artistic works contained in the definition of the term “free speech in connection with a public interest”;
- Preserves current law that actual damages are available only in a SLAPP suit filed by a government entity; and
- Makes technical changes.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Simmons

590-02155-15

20151312c1

A bill to be entitled

An act relating to strategic lawsuits against public participation; amending s. 768.295, F.S.; removing a short title; providing that legislative intent includes the protection of specified forms of free speech; defining the phrase "free speech in connection with public issues"; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 768.295, Florida Statutes, is amended to read:

768.295 Strategic Lawsuits Against Public Participation (SLAPP) suits by governmental entities prohibited.—

(1) ~~This section may be cited as the "Citizen Participation in Government Act."~~

~~(2)~~ It is the intent of the Legislature to protect the right in Florida ~~of Florida's citizens~~ to exercise ~~the their~~ rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct ~~their~~ representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. ~~The Legislature recognizes that "Strategic Lawsuits Against Public Participation" or "SLAPP" suits, as they are typically called, have increased over the last 30 years and are mostly filed by private industry and individuals. However,~~ It is the public policy of this state that

Page 1 of 4

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

590-02155-15

20151312c1

~~a person or governmental entity~~ ~~government entities~~ not engage in SLAPP suits because such actions are inconsistent with the right of ~~persons individuals~~ to exercise their constitutional rights of free speech in connection with public issues ~~participate in the state's institutions of government.~~

Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described ~~by governmental entities~~ will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida ~~citizens~~, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

~~(2)(3)~~ As used in this section, the phrase or term:

(a) "Free speech in connection with public issues" means any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

(b) "Governmental entity" or "government entity" means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

~~(3)(4)~~ A person or ~~No~~ governmental entity in this state may not shall file or cause to be filed, through its employees or

Page 2 of 4

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

590-02155-15

20151312c1

59 agents, any lawsuit, cause of action, claim, cross-claim, or
 60 counterclaim against another a person or entity without merit
 61 and primarily solely because such person or entity has exercised
 62 the constitutional right of free speech in connection with a
 63 public issue, or right to peacefully assemble, ~~the right~~ to
 64 instruct representatives of government, or ~~and the right~~ to
 65 petition for redress of grievances before the various
 66 governmental entities of this state, as protected by the First
 67 Amendment to the United States Constitution and s. 5, Art. I of
 68 the State Constitution.

69 ~~(4)(5)~~ A person or entity sued by a governmental entity or
 70 another person in violation of this section has a right to an
 71 expeditious resolution of a claim that the suit is in violation
 72 of this section. A person or entity may move ~~petition~~ the court
 73 for an order dismissing the action or granting final judgment in
 74 favor of that person or entity. The person or entity ~~petitioner~~
 75 may file a motion for summary judgment, together with
 76 supplemental affidavits, seeking a determination that the
 77 claimant's or governmental entity's lawsuit has been brought in
 78 violation of this section. The claimant or governmental entity
 79 shall thereafter file a its response and any supplemental
 80 affidavits. As soon as practicable, the court shall set a
 81 hearing on the ~~petitioner's~~ motion, which shall be held at the
 82 earliest possible time after the filing of the claimant's or
 83 governmental entity's response. The court may award, subject to
 84 the limitations in s. 768.28, the party sued by a governmental
 85 entity actual damages arising from a the governmental entity's
 86 violation of this section ~~act~~. The court shall award the
 87 prevailing party reasonable attorney ~~attorney's~~ fees and costs

Page 3 of 4

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

590-02155-15

20151312c1

88 incurred in connection with a claim that an action was filed in
 89 violation of this section.

90 ~~(5)(6)~~ In any case filed by a governmental entity which is
 91 found by a court to be in violation of this section, the
 92 governmental entity shall report such finding and provide a copy
 93 of the court's order to the Attorney General no later than 30
 94 days after such order is final. The Attorney General shall
 95 report any violation of this section by a governmental entity to
 96 the Cabinet, the President of the Senate, and the Speaker of the
 97 House of Representatives. A copy of such report shall be
 98 provided to the affected governmental entity.

99 Section 2. This act shall take effect July 1, 2015.

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

Meeting Date 3/19/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Bill Number (if applicable) 1312

Topic Strategic Lawsuits Amendment Barcode (if applicable) _____

Name Sam Morley

Job Title Gen. Counsel

Address College Ave Phone 2124395

Street Fall City FL State 32312 Zip

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

Representing Florida Press Association

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Bill Number (if applicable) 1312

Topic _____

Amendment Barcode (if applicable) _____

Name EVY SPENGLMAN

Job Title _____

Address 2255 Adams St

Phone 381632250

Street 2255 Adams St
City 2255 State FL Zip _____

Email _____

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

Representing CHAMBER

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.

3-19-15

Meeting Date

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

THE FLORIDA SENATE

APPEARANCE RECORD

1312

Bill Number (if applicable)

Topic Strategic lawsuits against Public Participation
Name Will McKinley Amendment Barcode (if applicable)

Job Title _____

Address 106 E College

Street

City TLH

City

State FL

State

Zip 32201

Zip

Phone 850-681-1980

Phone

Email Will@poolemckinley.com

Email

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Motion Picture Association of America

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. Form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

March 19, 2015

The Honorable David Simmons
Senate Committee on Rules
404 S. Monroe St. 402 S
Tallahassee, FL 32399-1100

3/19/15
O/C
JL

Dear Chairman Simmons:

I respectfully request that I be excused from the Committee on Rules meeting scheduled for 1 p.m. on Thursday, March 19, 2015.

I will be presenting bills in another committee. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

JL:tc

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case:
Judge:

Type:

Started: 3/19/2015 1:02:30 PM

Ends: 3/19/2015 2:03:42 PM

Length: 01:01:13

1:02:32 PM Senator Simmons calls the meeting to order
1:02:51 PM Roll call
1:02:53 PM quorum present
1:03:46 PM CS/CS/SB 182
1:04:16 PM Senator Hays explains the bill
1:05:40 PM Amendment 786806 by Senator Latvala
1:05:47 PM Senator Diaz de la Portilla explains the amendment
1:06:12 PM Senator Gibson with a question
1:06:46 PM Senator Hays answers
1:07:50 PM Senator Joyner comments
1:08:00 PM Senator Montford with a question
1:08:03 PM Senator Simmons answers
1:08:15 PM Senator Joyner with a question
1:08:28 PM Senator Diaz de la Portilla answers
1:09:42 PM Marshall Ogletree, Interim Executive Director, United Faculty of Florida speaks for the amendment
1:10:15 PM Senator Soto with a question
1:10:28 PM Senator Simmons answers
1:10:44 PM Senator Lee with a question
1:10:54 PM Marshall Ogletree answers
1:11:10 PM Senator Diaz de la Portilla waives close on the amendment
1:11:20 PM without objection amendment is adopted
1:11:35 PM Senator Richter amendment withdrawn
1:11:38 PM Back to the bill as amended
1:11:53 PM Senator Joyner with a question
1:12:25 PM Senator Hays answers
1:12:35 PM Senator Joyner with a follow-up
1:12:49 PM Senator Hays answers
1:13:03 PM Senator Lee with a question
1:13:17 PM Senator Hays answers
1:14:51 PM Senator Lee with a follow-up
1:15:17 PM Senator Hays answers
1:15:19 PM Senator Lee with a follow-up
1:15:35 PM Senator Hays answers
1:16:10 PM Senator Lee with a question
1:16:51 PM Senator Hays answers
1:18:26 PM Senator Lee comments
1:18:46 PM Senator Hays comments
1:18:56 PM Senator Soto with a question
1:19:05 PM Senator Hays answers
1:19:32 PM Senator Soto with a follow-up
1:19:37 PM Senator Hays answers
1:19:45 PM Senator Soto with a question
1:19:52 PM Senator Hays answers
1:20:38 PM Senator Gibson with a question
1:21:07 PM Senator Hays answers
1:21:17 PM Senator Gibson with a follow-up
1:21:35 PM Senator Hays answers
1:21:55 PM Marshall Ogletree, waives in opposition
1:22:03 PM Senator Lee comments
1:22:19 PM Marshall Ogletree comments
1:22:29 PM Nancy Rogers, Associate Professor, speaks against the bill
1:24:46 PM Rick Templin, Florida AFL-CIO, speaks against the bill

1:28:23 PM Dr. Jennifer Proffitt, President, FSU Chapter United Faculty of Florida speaks against the bill
 1:32:50 PM Lakey, Graduate Teaching Assistant, FSU Progress Coalition, speaks against the bill
 1:35:38 PM Joanne Cannon, waives in opposition
 1:35:47 PM Katherine J. Hiley waives in opposition
 1:35:54 PM Delores Kelly waives in opposition
 1:36:10 PM Norm Lupo, Florida Citizen and proud Veteran speaks against the bill
 1:37:47 PM Lori Bell waives in opposition
 1:37:57 PM David Bryant, Electrician, waives in opposition
 1:38:12 PM Karen Houston, Coordinator, waives in opposition
 1:38:16 PM Carol Horton, Public School Teacher, waives in opposition
 1:38:33 PM Ngoe Nguyen, Teacher, waives in opposition
 1:38:50 PM Amy Datz waives in opposition
 1:38:57 PM Patricia Ingle waives in opposition
 1:39:04 PM James Ingle, Electrician, speaks against the bill
 1:40:24 PM Senator Gaivano makes a motion to temporarily postpone
 1:41:02 PM Voice vote taken
 1:41:04 PM CS/CS/SB 182 temporarily postponed
 1:41:24 PM SB 456
 1:41:29 PM Senator Braynon explains the bill
 1:42:09 PM Larry Williams, Attorney, representing True Blue, waives in support of the bill
 1:42:29 PM Senator Braynon waives close
 1:42:37 PM Roll call
 1:43:10 PM SB 456 reported favorably
 1:43:28 PM SB 570
 1:43:35 PM Senator Simmons comments
 1:45:46 PM Senator Richter with a question
 1:46:02 PM Senator Simmons answers
 1:47:09 PM Chase Daniels explains the bill
 1:47:32 PM Senator Benacquisto with a question
 1:47:45 PM Chase Daniels answers
 1:48:30 PM Frank Greco, Lieutenant, Florida Sheriff's Association, speaks in support of the bill
 1:49:01 PM Senator Galvano speaks in debate
 1:49:45 PM Chase Daniels waives close on the bill
 1:49:57 PM Roll Call
 1:50:24 PM SB 570 reported favorably
 1:50:32 PM Senator Simmons turns the chair over to Senator Soto
 1:50:48 PM CS/CS/SB 342
 1:50:52 PM Senator Simmons explains the bill
 1:52:23 PM Amendment 918260
 1:52:31 PM Senator Simmons explains the amendment
 1:53:23 PM Senator Gibson with a question
 1:53:56 PM Senator Simmons answers
 1:54:36 PM Robert Trammell, General Counsel, Florida Public Defender's office, waives in support
 1:55:01 PM Leisa Wiseman, Director, Communications & Government Affairs, representing the Florida Coalition
 Against Domestic Violence
 1:55:02 PM waives in support
 1:55:23 PM Senator Simmons closes on the amendment
 1:55:56 PM without objection, the amendment passes
 1:56:06 PM back to the bill as amended
 1:56:10 PM Senator Simmons waives close on the bill
 1:56:21 PM Roll call
 1:56:44 PM CS/CS/SB 342 reported favorably
 1:57:01 PM CS/SB 1312
 1:57:07 PM Senator Simmons explains the bill
 1:59:23 PM Will McKinley, Motion Picture Association of America waives in support
 1:59:36 PM Guy Spearman, representing Gannett, waives in support
 1:59:41 PM Sam Morley, General Counsel, Florida Press Association, waives in support
 2:00:01 PM Senator Simmons waives close
 2:00:04 PM Roll call
 2:00:19 PM CS/SB 1312 reported favorably
 2:00:32 PM Chair turned back over to Senator Simmons
 2:00:41 PM SB 7012

2:00:47 PM Senator Benacquisto explains the bill
2:01:22 PM Senator Benacquisto waives close on the bill
2:01:34 PM Roll call
2:02:06 PM SB 7012 reported favorably
2:02:22 PM Senator Simmons comments
2:03:25 PM Senator Diaz de la Portilla moves we adjourn



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

3/19/15
O.K.
[Signature]

March 17, 2015

Senator David Simmons, Chair
Senate Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Simmons:

I will need to present a bill in Fiscal Policy on Thursday, at the same time that the Rules Committee is meeting. I have made arrangements to go to Fiscal Policy to be the first presenter and will come to Rules as soon as I have finished presenting my bill if this is suitable to you.

Thank you for your consideration,

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore