

<b>Tab 1</b>	<b>CS/SB 298</b> by <b>CJ, Evers</b> ; (Compare to CS/H 0151) Installation of Tracking Devices or Tracking Applications					
155268	D	S		RC, Lee	Delete everything after	02/05 02:18 PM
449336	AA	S		RC, Lee	Delete L.35:	02/09 12:48 PM
<b>Tab 2</b>	<b>CS/CS/SB 744</b> by <b>CA, EE, Bean</b> ; (Similar to 1ST ENG/H 0541) Addresses of Legal Residence					
<b>Tab 3</b>	<b>CS/SB 752</b> by <b>GO, Abruzzo</b> ; (Similar to CS/H 0587) Public Records/Agency Personnel Information					
174386	D	S	RCS	RC, Gibson	Delete everything after	02/10 02:12 PM
<b>Tab 4</b>	<b>CS/SB 762</b> by <b>GO, Abruzzo</b> ; (Similar to CS/H 0741) Public Records/Petitions for Involuntary Assessment and Stabilization, Court Orders, and Related Records					
<b>Tab 5</b>	<b>CS/SB 846</b> by <b>EP, Abruzzo</b> ; (Similar to CS/H 0681) Divers-down Warning Devices					
<b>Tab 6</b>	<b>SB 914</b> by <b>Detert</b> ; (Similar to H 0901) Public Records/Identifying Medical and Personal Information					
<b>Tab 7</b>	<b>CS/SB 1004</b> by <b>CA, Hays</b> ; (Similar to CS/CS/H 0869) Public Records/Security System Plans					
<b>Tab 8</b>	<b>CS/CS/SB 1278</b> by <b>GO, JU, Ring</b> ; (Similar to CS/H 1027) Public Records/Baker Act Court Proceedings					
<b>Tab 9</b>	<b>SB 7048</b> by <b>CF</b> ; (Similar to H 7069) OGSR/Client Records and Donor Information Collected by Regional Autism Centers					
<b>Tab 10</b>	<b>CS/SB 250</b> by <b>JU, Lee</b> ; (Identical to H 0553) Parenting and Time-sharing					
<b>Tab 11</b>	<b>CS/SB 582</b> by <b>GO, Gaetz</b> ; (Identical to 1ST ENG/H 7071) Public Corruption					
<b>Tab 12</b>	<b>SM 798</b> by <b>Soto</b> ; (Similar to CS/H 0601) Promotion of Economic Recovery in Puerto Rico					

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**  
**Senator Simmons, Chair**  
**Senator Soto, Vice Chair**

**MEETING DATE:** Wednesday, February 10, 2016  
**TIME:** 10:00 a.m.—12:00 noon  
**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	<b>CS/SB 298</b> Criminal Justice / Evers (Compare CS/H 151)	Installation of Tracking Devices or Tracking Applications; Revising exceptions to the prohibition on installation of tracking devices or tracking applications; authorizing the Florida Department of Corrections and the Florida Department of Juvenile Justice to lawfully install a tracking device or tracking application on another person's property as part of a criminal investigation; specifying circumstances in which a private investigator is authorized to or prohibited from installing a tracking device or tracking application, etc.  CJ 10/20/2015 Not Considered CJ 11/02/2015 Fav/CS ACJ 12/03/2015 Favorable RC 02/10/2016 Not Considered	Not Considered
With subcommittee recommendation - Criminal and Civil Justice			
2	<b>CS/CS/SB 744</b> Community Affairs / Ethics and Elections / Bean (Similar H 541)	Addresses of Legal Residence; Requiring a complete voter registration application to include the applicant's address of legal residence; specifying that an applicant's failure to include additional distinguishing information on an application does not affect his or her qualifications to register or vote; providing that a list of valid addresses maintained by a supervisor of elections include certain additional distinguishing information, etc.  EE 01/20/2016 Fav/CS CA 02/01/2016 Fav/CS RC 02/10/2016 Favorable	Favorable Yeas 12 Nays 0
3	<b>CS/SB 752</b> Governmental Oversight and Accountability / Abruzzo (Similar CS/H 587)	Public Records/Agency Personnel Information; Providing an exemption from public records requirements for certain identifying and location information of current or former agency personnel whose duties include conducting internal audits, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  GO 01/19/2016 Fav/CS RC 02/10/2016 Fav/CS	Fav/CS Yeas 11 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 10, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 762</b> Governmental Oversight and Accountability / Abruzzo (Similar CS/H 741)	Public Records/Petitions for Involuntary Assessment and Stabilization, Court Orders, and Related Records; Providing an exemption from public records requirements for a petition for involuntary assessment and stabilization of a substance abuse impaired person, court orders, and related records, and personal identifying information on certain court dockets; providing a statement of public necessity, etc.  CF 01/20/2016 Favorable GO 02/01/2016 Fav/CS RC 02/10/2016 Favorable	Favorable Yeas 12 Nays 0
5	<b>CS/SB 846</b> Environmental Preservation and Conservation / Abruzzo (Similar CS/H 681)	Divers-down Warning Devices; Revising the definitions of the terms “divers-down buoy,” “divers- down flag,” and “divers-down symbol”; expanding the types of indicators or devices allowed to be used to signal the presence of submerged divers; specifying requirements for divers-down warning devices, etc.  EP 01/20/2016 Fav/CS CM 02/01/2016 Favorable RC 02/10/2016 Favorable	Favorable Yeas 12 Nays 0
6	<b>SB 914</b> Detert (Similar H 901)	Public Records/Identifying Medical and Personal Information; Creating an exemption from public records requirements for medical and personal identifying information of an applicant for or a recipient of the property tax exemption for totally and permanently disabled persons; providing for retroactive application; authorizing disclosure of such information under certain conditions; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CA 01/19/2016 Favorable GO 02/01/2016 Favorable RC 02/10/2016 Favorable	Favorable Yeas 11 Nays 1
7	<b>CS/SB 1004</b> Community Affairs / Hays (Similar CS/H 869)	Public Records/Security System Plans; Revising exceptions to a public records exemption; providing exceptions to a public records exemption, etc.  CA 01/19/2016 Fav/CS GO 02/01/2016 Favorable RC 02/10/2016 Favorable	Favorable Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 10, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>CS/CS/SB 1278</b> Governmental Oversight and Accountability / Judiciary / Ring (Similar CS/H 1027, Compare S 1280)	Public Records/Baker Act Court Proceedings; Providing an exemption from public records requirements for pleadings, orders, and related records, and personal identifying information on a docket, held pursuant to part I of ch. 394, F.S., relating to mental health services; requiring a person, an agency, or an entity that receives certain information to maintain it as confidential and exempt; providing a statement of public necessity, etc.  JU 01/20/2016 Fav/CS GO 02/01/2016 Fav/CS RC 02/10/2016 Favorable	Favorable Yeas 10 Nays 1
9	<b>SB 7048</b> Children, Families, and Elder Affairs (Similar H 7069)	OGSR/Client Records and Donor Information Collected by Regional Autism Centers; Amending provisions which provide an exemption from public records requirements for information relating to client records and donor information collected by regional autism centers; removing the scheduled repeal of the exemption, etc.  GO 02/01/2016 Favorable RC 02/10/2016 Favorable	Favorable Yeas 11 Nays 0
10	<b>CS/SB 250</b> Judiciary / Lee (Identical H 553, Compare S 668)	Parenting and Time-sharing; Creating a presumption that approximately equal time-sharing by both parents is in the best interest of the child; prohibiting the modification of a determination of parental responsibility, a parenting plan, or a time-sharing schedule unless certain determinations are made, etc.  JU 01/26/2016 Fav/CS RC 02/10/2016 Favorable	Favorable Yeas 7 Nays 4
11	<b>CS/SB 582</b> Governmental Oversight and Accountability / Gaetz (Identical H 7071, Compare CS/H 593, CS/S 686)	Public Corruption; Revising the definition of the term "bribery"; revising requirements for prosecution; revising the prohibition against unlawful compensation or reward for official behavior to conform to changes made by the act; revising the prohibition against official misconduct to conform to changes made by the act; revising applicability of the offense to include public contractors, etc.  GO 12/01/2015 Temporarily Postponed GO 01/11/2016 Unfavorable CJ 02/01/2016 Favorable RC 02/10/2016 Favorable	Favorable Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 10, 2016, 10:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>SM 798</b> Soto (Similar CS/HM 601)	Promotion of Economic Recovery in Puerto Rico; Urging Congress to enact legislation to promote economic recovery in the Commonwealth of Puerto Rico, etc.  CM 01/25/2016 Favorable RC 02/10/2016 Unfavorable	Unfavorable Yeas 5 Nays 6

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Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Installation of Tracking Devices or Tracking Applications

DATE: February 9, 2016      REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. Clodfelter	Sadberry	ACJ	<b>Recommend: Favorable</b>
3. Erickson	Phelps	RC	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 298 amends section 934.425, Florida Statutes, which generally prohibits the installation of tracking devices and tracking applications without the consent of the property owner. Currently, the law prohibits private investigators from installing tracking devices or tracking applications unless the law authorizes the investigator's client to perform such installation. The bill provides three additional circumstances in which the private investigator may perform such installation: pursuant to a court order; to locate a fugitive from justice; and to locate lost or stolen property or locate assets awarded by the court.

Unless one of these circumstances applies, the private investigator may not install a tracking device or tracking application. Additionally, a private investigator may not install a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.

The bill also authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation, and authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

The offense is a second degree misdemeanor. The amendments to current law will have no impact on the state prison population and no more than an insignificant fiscal impact on other aspects of the criminal justice system.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

### **The General Prohibition on Installation of Tracking Devices or Tracking Applications and Exceptions to This Prohibition**

Section 934.425, F.S., was created by ch. 2015-137, L.O.F. Section 934.425(2), F.S., generally prohibits a person<sup>1</sup> from knowingly installing a tracking device<sup>2</sup> or tracking application<sup>3</sup> on another person's property without the other person's consent.<sup>4</sup> A person who violates s. 934.425, F.S., commits a second degree misdemeanor.<sup>5</sup>

Section 934.425(4), provides that the section does not apply to:

- A law enforcement officer (as defined in s. 943.10, F.S.), or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
  - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
  - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
  - The parent or legal guardian has sole custody of the minor child; or
  - The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.
- A caregiver of an elderly person or disabled adult (as those terms are defined in s. 825.101, F.S.), if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult.

<sup>1</sup> "Person" means an individual but does not include a business entity. Section 934.425(1)(d), F.S.

<sup>2</sup> "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. Section 934.425(1)(c), F.S.

<sup>3</sup> "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. Section 934.425(1)(b), F.S.

<sup>4</sup> Section 943.425(3), F.S., provides that a person's consent is presumed to be revoked if: (a) the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or (b) the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, F.S., s. 741.315, F.S., s. 784.046, F.S., or s. 784.0485, F.S.

<sup>5</sup> Section 934.425(5), F.S. A second degree misdemeanor is punishable by up to 60 days in a county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

- A person acting in good faith on behalf of a business entity<sup>6</sup> for a legitimate business purpose. *However, relevant to the bill, this “good faith” exception does not apply to a person engaged in a private investigation (as defined in s. 493.6101, F.S.) on behalf of another person unless such activities would otherwise be exempt under subsection (4) if performed by the person engaging the private investigator.*
- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
  - The tracking device or tracking application is removed before the vehicle’s title is transferred or the vehicle’s lease expires;
  - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; or
  - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

### **Grounds for Disciplinary Action**

Section 493.6118, F.S., specifies grounds for which disciplinary action may be taken by the Department of Agriculture and Consumer Services against any licensee, agency, or applicant regulated by ch. 493, F.S. (private investigative, private security, and repossession services), or any unlicensed person engaged in activities regulated under this chapter. One of the grounds for disciplinary action is the installation of a tracking device or tracking application in violation of s. 934.425, F.S.<sup>7</sup>

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

Section 934.425, F.S., generally prohibits a person from knowingly installing a tracking device or tracking application on another person’s property without the other person’s consent. This section also provides that the prohibition does not apply to certain persons. Relevant to the bill, this prohibition does not apply to a person “acting in good faith on behalf of a business entity for a legitimate business purpose.” However, this “good faith” exemption does not apply to a private investigator conducting an investigation on behalf of another person unless such activities would otherwise be exempt if performed by the person engaging the private investigator.

The bill amends s. 934.425, F.S., to authorize private investigators to install a tracking device or tracking application in the following circumstances:

- If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
- If authorized by an order issued by a court of this state;
- To locate a person who is a fugitive from justice; or
- To locate lost or stolen property or locate assets awarded by the court.

<sup>6</sup> “Business entity” means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. Section 934.425(1)(a), F.S.

<sup>7</sup> See ch. 2015-137, L.O.F.



Unless one of these circumstances applies, the private investigator may not install a tracking device or tracking application. Additionally, a private investigator may not install a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.

The bill also authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation, and authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

The bill also reenacts s. 493.6118(1)(y), F.S., for the purpose of incorporating the amendment made by this act to s. 934.425, F.S.

The effective date of the bill is July 1, 2016.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because the offense is a second degree misdemeanor, the Criminal Justice Impact Conference determined that CS/SB 298 as originally filed would have no impact on the state prison population. The amendments incorporated in the committee substitute would not change this determination. Any other fiscal impact on the criminal justice system would be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 934.425 of the Florida Statutes.

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

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

**CS by Criminal Justice on November 2, 2015:**

- Authorizes private investigators to install a tracking device or tracking application in the following circumstances:
  - If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
  - If authorized by an order issued by a court of this state;
  - To locate a person who is a fugitive from justice; or
  - To locate lost or stolen property or locate assets awarded by the court.
- Prohibits a private investigator from installing a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.
- Authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation.
- Authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

**B. Amendments:**

None.



155268

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (d) of subsection (4) of section  
934.425, Florida Statutes, is amended to read:

934.425 Installation of tracking devices or tracking  
applications; exceptions; penalties.—

(4) This section does not apply to:

(d) A person acting in good faith on behalf of a business  
entity for a legitimate business purpose. This paragraph does



155268

12 not apply to a person engaged in private investigation, as  
13 defined in s. 493.6101, on behalf of another person, except  
14 that:

15 1. A person or business entity that is exempt under  
16 paragraph (b), paragraph (c), or paragraph (e) may hire a  
17 private investigator to install a tracking device or tracking  
18 application consistent with the applicable exemption.

19 2. A private investigator may install a tracking device or  
20 tracking application pursuant to a lawful court order unless  
21 ~~such activities would otherwise be exempt under this subsection~~  
22 ~~if performed by the person engaging the private investigator.~~

23 Section 2. For the purpose of incorporating the amendment  
24 made by this act to section 934.425, Florida Statutes, in a  
25 reference thereto, paragraph (y) of subsection (1) of section  
26 493.6118, Florida Statutes, is reenacted to read:

27 493.6118 Grounds for disciplinary action.—

28 (1) The following constitute grounds for which disciplinary  
29 action specified in subsection (2) may be taken by the  
30 department against any licensee, agency, or applicant regulated  
31 by this chapter, or any unlicensed person engaged in activities  
32 regulated under this chapter.

33 (y) Installation of a tracking device or tracking  
34 application in violation of s. 934.425.

35 Section 3. This act shall take effect July 1, 2016.

36  
37 ===== T I T L E A M E N D M E N T =====

38 And the title is amended as follows:

39 Delete everything before the enacting clause  
40 and insert:



155268

41                   A bill to be entitled  
42           An act relating to installation of tracking devices or  
43           tracking applications; amending s. 934.425, F.S.;  
44           revising an exception to a prohibition on the  
45           installation of tracking devices or applications to  
46           specify that the exception applies only to private  
47           investigators under certain circumstances; deleting a  
48           provision concerning persons engaged in private  
49           investigation; reenacting s. 493.6118(1)(y), F.S.,  
50           relating to grounds for disciplinary action, to  
51           incorporate the amendment made to s. 934.425, F.S., in  
52           a reference thereto; providing an effective date.



449336

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Lee) recommended the following:

**Senate Amendment to Amendment (155268)**

Delete line 35

and insert:

Section 3. This act shall take effect October 1, 2016.

By the Committee on Criminal Justice; and Senator Evers

591-01036-16

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A bill to be entitled

An act relating to installation of tracking devices or tracking applications; amending s. 934.425, F.S.; revising exceptions to the prohibition on installation of tracking devices or tracking applications; authorizing the Florida Department of Corrections and the Florida Department of Juvenile Justice to lawfully install a tracking device or tracking application on another person's property as part of a criminal investigation; authorizing parents or legal guardians who are separated or divorced to install a tracking device or tracking application on their minor child's property if a separation or divorce decree authorizes such installation; specifying circumstances in which a private investigator is authorized to or prohibited from installing a tracking device or tracking application; reenacting s. 493.6118(1)(y), F.S., relating to grounds for disciplinary action, to incorporate the amendment made to s. 934.425, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (d) of subsection (4) of section 934.425, Florida Statutes, are amended to read:

934.425 Installation of tracking devices or tracking applications; exceptions; penalties.—

(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or

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

591-01036-16

2016298c1

any local, state, federal, or military law enforcement agency, the Florida Department of Corrections, or the Florida Department of Juvenile Justice that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.

(b) A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:

1. The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;

2. The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;

3. The parent or legal guardian has sole custody of the minor child; or

4. The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application, or if a separation or divorce decree authorizes such installation.

(d) A person acting in good faith on behalf of a business entity for a legitimate business purpose. This paragraph does not apply to:

1. A person engaged in private investigation, as defined in s. 493.6101, on behalf of another person, unless any of the following circumstances apply:

a. Such activities would otherwise be exempt under this subsection if performed by the person engaging the private investigator;—

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

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2016298c1

59 b. The installation of a tracking device or tracking  
60 application on another person's property is authorized by an  
61 order issued by a court of this state;

62 c. The installation of a tracking device or tracking  
63 application is for the purpose of locating a person known to be  
64 a fugitive from justice; or

65 d. The installation of a tracking device or tracking  
66 application is for the purpose of locating lost or stolen  
67 property or locating assets that have been awarded by the court.

68 2. A private investigator who is working on behalf of a  
69 client who is subject to a no contact order or an injunction for  
70 protection, or a private investigator who knows or has reason to  
71 know that a person seeking his or her investigative services is  
72 involved in the commission of a crime or an unlawful act.

73 Section 2. For the purpose of incorporating the amendment  
74 made by this act to section 934.425, Florida Statutes, in a  
75 reference thereto, paragraph (y) of subsection (1) of section  
76 493.6118, Florida Statutes, is reenacted to read:

77 493.6118 Grounds for disciplinary action.—

78 (1) The following constitute grounds for which disciplinary  
79 action specified in subsection (2) may be taken by the  
80 department against any licensee, agency, or applicant regulated  
81 by this chapter, or any unlicensed person engaged in activities  
82 regulated under this chapter.

83 (y) Installation of a tracking device or tracking  
84 application in violation of s. 934.425.

85 Section 3. This act shall take effect July 1, 2016.





The Florida Senate

## Committee Agenda Request

**To:** Senator Simmons  
Chair, Rules Committee

**Subject:** Committee Agenda Request

December 3, 2015

Dear Senator Simmons,

I respectfully request that **Senate Bill 298**, regarding **Installation of Tracking Devices or Tracking Applications**, be placed on the:

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

C

A handwritten signature in cursive script that reads "Greg Evers".

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Senator Greg Evers  
Florida Senate, District 2

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 744

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Bean

SUBJECT: Addresses of Legal Residence

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	<b>Fav/CS</b>
2.	Cochran	Yeatman	CA	<b>Fav/CS</b>
3.	Carlton	Phelps	RC	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 744 defines “address of legal residence.” The bill requires voter registration applications to contain the applicant’s address of legal residence, including an apartment, suite, lot, room, dormitory room number, or other appropriate identifier. The bill states that failure to provide a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application does not impact a voter’s eligibility to register to vote or to cast a ballot. The bill also provides that failure to provide a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application may not serve as the basis for a challenge to a voter’s eligibility or reason to not count a ballot.

Under the bill, supervisors of elections are required to include within their list of valid residential street addresses all information necessary to distinguish residences including a distinguishing apartment, suite, lot, room, or dormitory room number, or other identifier. The bill also requires supervisors of elections to make all reasonable efforts to obtain differentiating information if a voter registration application does not include such information.

**II. Present Situation:**

The Florida Voter Registration Act (FVRA)<sup>1</sup> delineates the qualifications and requirements necessary for a person to register to vote in Florida.<sup>2</sup> In order to be a registered voter in Florida, a

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<sup>1</sup> Part II, ch. 97, F.S.

<sup>2</sup> See ss. 97.041-97.105, F.S.

person must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, a legal resident of the county in which the person seeks to be registered, and register pursuant to the Florida Election Code.<sup>3</sup>

The Department of State must prescribe by rule a uniform statewide voter registration application.<sup>4</sup> The uniform statewide voter registration application must be designed to elicit certain information from the applicant.<sup>5</sup> A voter registration application is considered complete if it contains the following information necessary to establish the applicant's eligibility:<sup>6</sup>

- The applicant's name, legal residence address,<sup>7</sup> and date of birth.
- A mark in the checkbox affirming the applicant is a citizen of the United States.
- The applicant's current and valid Florida driver's license number or identification number, or if the applicant does not have a Florida driver's license or identification card, then the last four numbers of his or her social security number.<sup>8</sup>
- A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her civil rights restored.
- A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored.
- The applicant's signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles.

The term "legal residence" is not defined in the Florida Election Code;<sup>9</sup> however, the term has been defined in case law.<sup>10</sup> A legal residence "is the place where a person has fixed an abode with the present intention of making it their permanent home."<sup>11</sup> According to the Florida Supreme Court a "legal residence consists of the concurrence of both fact and intention."<sup>12</sup>

Supervisors of elections (supervisors) act as the receivers and custodians of new voter registrations, as well as the receivers and custodians of any changes in the status of current registered electors within their respective counties.<sup>13</sup> Each supervisor must maintain a list of

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<sup>3</sup> Section 97.041(1)(a), F.S.

<sup>4</sup> Section 97.052(1), F.S.; Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

<sup>5</sup> See s. 97.052(2), F.S.

<sup>6</sup> Section 97.053(5)(a), F.S.

<sup>7</sup> The Florida Voter Registration Application, incorporated by the Division of Elections into rule, has distinct sections for an applicant's: street address, apt/lot/unit number, city, county, and zip code. Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

<sup>8</sup> If an applicant has not been issued a current and valid Florida driver license, identification card, or social security number, the applicant must affirm this fact in the manner prescribed in the uniform statewide voter registration application.

<sup>9</sup> "No provision of the Florida Election Code defines legal residency. However, this office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary." Op. Div. of Elections, DE 93-05.

<sup>10</sup> *Minick v. Minick*, 149 So. 483 (Fla. 1933).

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

<sup>12</sup> *Bloomfield v. City of St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955).

<sup>13</sup> Section 98.015(3), F.S.

valid residential street addresses<sup>14</sup> for the purpose of verifying the legal addresses of voters residing within his or her county.<sup>15</sup>

### III. Effect of Proposed Changes:

**Section 1** creates a new s. 97.021(3), F.S., and renumbers the current subsections accordingly. The new subsection defines the term “address of legal residence” for purposes of the Florida Election Code to mean the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier.

**Section 2** amends s. 97.053(5)(a), F.S., requiring the voter registration application to include the applicant’s address of legal residence in order to be considered complete. However, the bill states that failure to provide a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application does not impact a voter’s eligibility to register to vote or to cast a ballot. The bill also provides that failure to provide a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application may not serve as the basis for a challenge to a voter’s eligibility or as a reason to not count a ballot.

**Section 3** amends s. 97.057, F.S., incorporating the new term “address of legal residence.”

**Section 4** amends s. 98.015, F.S., requiring supervisors to include within their list of valid residential addresses, to the maximum extent practicable, information necessary to differentiate one address from another, such as an apartment, suite, lot, room, dormitory room number, or other appropriate identifier. This section also requires a supervisor to make all reasonable efforts to obtain differentiating information if it is not provided in a voter registration application.

**Section 5** provides an effective date of July 1, 2016.

### IV. Constitutional Issues:

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

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>14</sup> “Each county Supervisor shall submit electronically, at least monthly, by the 10<sup>th</sup> of each month, to the Division of Elections to the FVRS [Florida Voter Registration System] an uploaded index of valid residential street addresses so that the legal addresses on application can be verified as valid at the time of registering or updating a registration record.” Fla. Admin. Code R 1S-2.039(12)(a).

<sup>15</sup> Section 98.015(12), F.S.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Supervisors may experience a cost associated with revising their list of valid residential addresses to include information such as an apartment, suite, lot, room, or dormitory room number; however, it is likely the cost will be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 97.021, 97.053, 97.057, and 98.015.

**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 Community Affairs on February 1, 2016:**

Requires supervisors to make all reasonable efforts to obtain necessary differentiating information if it is not provided in a voter registration application.

**CS by Ethics and Elections on January 20, 2016:**

- Provides that failure to provide a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or to cast a ballot; and
- Provides that failure to provide a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application may not serve as the basis for a challenge to a voter's eligibility or reason to not count a ballot.

B. Amendments:

None.

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

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By the Committees on Community Affairs; and Ethics and Elections; and Senator Bean

578-02868-16

2016744c2

A bill to be entitled

An act relating to addresses of legal residence; amending s. 97.021, F.S.; defining the term "address of legal residence"; amending s. 97.053, F.S.; requiring a complete voter registration application to include the applicant's address of legal residence; specifying that an applicant's failure to include additional distinguishing information on an application does not affect his or her qualifications to register or vote; amending s. 97.057, F.S.; conforming a provision; amending s. 98.015, F.S.; providing that a list of valid addresses maintained by a supervisor of elections include certain additional distinguishing information; requiring the supervisor to make reasonable efforts to obtain residence information omitted on voter registration applications; providing an effective date.

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

Section 1. Present subsections (3) through (44) of section 97.021, Florida Statutes, are renumbered as subsections (4) through (45), respectively, and a new subsection (3) is added to that section, to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(3) "Address of legal residence" means the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier.

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

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Section 2. Paragraph (a) of subsection (5) of section 97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

(5) (a) A voter registration application is complete if it contains the following information necessary to establish the applicant's eligibility pursuant to s. 97.041, including:

1. The applicant's name.
2. The applicant's address of legal residence address. Failure to include a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or cast a ballot, and such an omission may not serve as the basis for a challenge to a voter's eligibility or as a reason to not count a ballot.
3. The applicant's date of birth.
4. A mark in the checkbox affirming that the applicant is a citizen of the United States.
- 5.a. The applicant's current and valid Florida driver license number or the identification number from a Florida identification card issued under s. 322.051, or
- b. If the applicant has not been issued a current and valid Florida driver license or a Florida identification card, the last four digits of the applicant's social security number.

In case an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant shall affirm this fact in the manner prescribed in the uniform statewide voter registration application.

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61 6. A mark in the checkbox affirming that the applicant has  
62 not been convicted of a felony or that, if convicted, has had  
63 his or her civil rights restored.

64 7. A mark in the checkbox affirming that the applicant has  
65 not been adjudicated mentally incapacitated with respect to  
66 voting or that, if so adjudicated, has had his or her right to  
67 vote restored.

68 8. The original signature or a digital signature  
69 transmitted by the Department of Highway Safety and Motor  
70 Vehicles of the applicant swearing or affirming under the  
71 penalty for false swearing pursuant to s. 104.011 that the  
72 information contained in the registration application is true  
73 and subscribing to the oath required by s. 3, Art. VI of the  
74 State Constitution and s. 97.051.

75 Section 3. Subsection (10) of section 97.057, Florida  
76 Statutes, is amended to read:

77 97.057 Voter registration by the Department of Highway  
78 Safety and Motor Vehicles.—

79 (10) The department shall provide the Department of Highway  
80 Safety and Motor Vehicles with an electronic database of street  
81 addresses valid for use as an address of ~~the~~ legal residence  
82 ~~address~~ as required in s. 97.053(5). The Department of Highway  
83 Safety and Motor Vehicles shall compare the address provided by  
84 the applicant against the database of valid street addresses. If  
85 the address provided by the applicant does not match a valid  
86 street address in the database, the applicant will be asked to  
87 verify the address provided. The Department of Highway Safety  
88 and Motor Vehicles may ~~shall~~ not reject any application for  
89 voter registration for which a valid match cannot be made.

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

578-02868-16

2016744c2

90 Section 4. Subsection (12) of section 98.015, Florida  
91 Statutes, is amended to read:

92 98.015 Supervisor of elections; election, tenure of office,  
93 compensation, custody of registration-related documents, office  
94 hours, successor, seal; appointment of deputy supervisors;  
95 duties.—

96 (12) Each supervisor shall maintain a list of valid  
97 residential street addresses for purposes of verifying the legal  
98 addresses of voters residing in the supervisor's county. To the  
99 maximum extent practicable, the list must include information  
100 necessary to differentiate one residence from another,  
101 including, but not limited to, a distinguishing apartment,  
102 suite, lot, room, or dormitory room number or other identifier.  
103 If a voter registration application does not include information  
104 necessary to differentiate one residence from another, the  
105 supervisor shall make all reasonable efforts to obtain such  
106 information in order to maintain the list of valid residential  
107 street address. The supervisor shall make all reasonable efforts  
108 to coordinate with county 911 service providers, property  
109 appraisers, the United States Postal Service, or other agencies  
110 as necessary to ensure the continued accuracy of such list. The  
111 supervisor shall provide the list of valid residential addresses  
112 to the statewide voter registration system in the manner and  
113 frequency specified by rule of the department.

114 Section 5. This act shall take effect July 1, 2016.

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/16

Meeting Date

744

Bill Number (if applicable)

Topic Votes Reg Act #'s

Amendment Barcode (if applicable)

Name Gregg Prentice

Job Title N/A

Address 10910 Kenbrook Drive

Phone \_\_\_\_\_

Street

Riverview FL

33578

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

For Bill 957 Amendment

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

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 2, 2016

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I respectfully request that **Senate Bill # 744**, relating to Addresses of Legal Residences, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

\_\_\_\_\_  
Senator Aaron Bean  
Florida Senate, District 4

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 752

INTRODUCER: Rules Committee, Governmental Oversight and Accountability Committee and Senator Abruzzo

SUBJECT: Public Records/Office of Inspector General Identifying and Location Information

DATE: February 10, 2016

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 752 exempts from public inspection and disclosure certain personal identifying information of a current or former employee of an agency's office of inspector general or internal audit department. The exemption applies to those employees who perform certain auditing and investigative duties. The exemption also covers an agency employee's spouse and children.

The bill states that it is a public necessity to protect such information because their activities can result in termination of, and criminal sanctions against, other persons. Agency personnel have been subject to threats, and agencies have had to institute safety measures.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2021, unless reenacted by the Legislature. The bill goes into effect upon becoming law.

A two-thirds vote of each house is required for the passage of the bill.

**II. Present Situation:**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business

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

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

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

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

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

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

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

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

### **State Agency Office of Inspector General**

Section 20.055(2), F.S., establishes an office of inspector general in each state agency, which is charged with promoting accountability, integrity, and efficiency in government. The office of an inspector general at an agency is also required to coordinate audits, investigations, and management reviews pursuant to s. 20.055(2)(d), F.S., and coordinate efforts to prevent and detect fraud and abuse in programs pursuant to s. 20.055(2)(e), F.S.

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

CS/CS/SB 752 amends s. 119.071, F.S., to exempt from public inspection and disclosure the home address, telephone numbers, dates of birth, and photographs of any current or former employee of an agency’s office of inspector general or internal audit department whose duties include auditing or investigation the following:

- Waste;
- Fraud;
- Abuse;
- Theft;
- Exploitation; or
- Other activities that could lead to criminal prosecution or administrative discipline.

The bill also exempts from public inspection and disclosure the spouse’s and children’s name, home address, telephone numbers, dates of birth, and place of employment. The names and locations of the school or daycare of an employee’s children are also exempt.

The bill requires that the employee must have made a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

The bill also includes a public necessity statement, as required by Article I, section 24(c) of the Florida Constitution. The bill states that it is a public necessity to protect such information because these employees and their families may be subject to revenge perpetrated by people who have been investigated or audited. The bill states that internal audits can lead to termination, wage garnishment and criminal prosecution. Agency personnel whose duties include conducting

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<sup>13</sup> 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).

<sup>14</sup> 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).

internal audits have been threatened by the public, and agencies have had to institute safety measures such as posting pictures of individuals who have made threats, installing security cameras, and calling law enforcement. Agency personnel and their families may be targets of revenge and their identification and location information should be exempt from public inspection and copying.

The bill goes in to effect upon becoming law.

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

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

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

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

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The public necessity statement supports the breadth of the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Indeterminate. Governmental entities will have to redact more information if this exemption passes. The costs associated with these redactions will be absorbed by the respective governmental entities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 119.071 of the Florida Statutes.

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

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

**CS\CS by Rules on February 10, 2016:**

The CS\CS does the following:

- Provides that the exemption applies to employees of an agency's offices of inspector general or internal auditing department with certain duties; and
- Removes the photographs of spouses and children from the exemption.

**CS by Government Oversight and Accountability on January 19, 2016:**

The CS does the following:

- Narrows the public records exemption to only agency staff who perform internal audits rather than all staff members of an agency's office of the inspector general.
- Removes references to social security numbers since that information is confidential and exempt under current law.
- Enhances and strengthens the public necessity statement with examples of how and why internal auditing staff have been threatened.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

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The Committee on Rules (Gibson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (d) of subsection (4) of section  
119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone  
numbers" includes home telephone numbers, personal cellular





12 telephone numbers, personal pager telephone numbers, and  
13 telephone numbers associated with personal communications  
14 devices.

15       2.a.(I) The home addresses, telephone numbers, social  
16 security numbers, dates of birth, and photographs of active or  
17 former sworn or civilian law enforcement personnel, including  
18 correctional and correctional probation officers, personnel of  
19 the Department of Children and Families whose duties include the  
20 investigation of abuse, neglect, exploitation, fraud, theft, or  
21 other criminal activities, personnel of the Department of Health  
22 whose duties are to support the investigation of child abuse or  
23 neglect, and personnel of the Department of Revenue or local  
24 governments whose responsibilities include revenue collection  
25 and enforcement or child support enforcement; the home  
26 addresses, telephone numbers, social security numbers,  
27 photographs, dates of birth, and places of employment of the  
28 spouses and children of such personnel; and the names and  
29 locations of schools and day care facilities attended by the  
30 children of such personnel are exempt from s. 119.07(1).

31       (II) The names of the spouses and children of active or  
32 former sworn or civilian law enforcement personnel and the other  
33 specified agency personnel identified in sub-sub-subparagraph  
34 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
35 State Constitution.

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

40       b. The home addresses, telephone numbers, dates of birth,



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41 and photographs of firefighters certified in compliance with s.  
42 633.408; the home addresses, telephone numbers, photographs,  
43 dates of birth, and places of employment of the spouses and  
44 children of such firefighters; and the names and locations of  
45 schools and day care facilities attended by the children of such  
46 firefighters are exempt from s. 119.07(1).

47 c. The home addresses, dates of birth, and telephone  
48 numbers of current or former justices of the Supreme Court,  
49 district court of appeal judges, circuit court judges, and  
50 county court judges; the home addresses, telephone numbers,  
51 dates of birth, and places of employment of the spouses and  
52 children of current or former justices and judges; and the names  
53 and locations of schools and day care facilities attended by the  
54 children of current or former justices and judges are exempt  
55 from s. 119.07(1).

56 d.(I) The home addresses, telephone numbers, social  
57 security numbers, dates of birth, and photographs of current or  
58 former state attorneys, assistant state attorneys, statewide  
59 prosecutors, or assistant statewide prosecutors; the home  
60 addresses, telephone numbers, social security numbers,  
61 photographs, dates of birth, and places of employment of the  
62 spouses and children of current or former state attorneys,  
63 assistant state attorneys, statewide prosecutors, or assistant  
64 statewide prosecutors; and the names and locations of schools  
65 and day care facilities attended by the children of current or  
66 former state attorneys, assistant state attorneys, statewide  
67 prosecutors, or assistant statewide prosecutors are exempt from  
68 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

69 (II) The names of the spouses and children of current or



70 former state attorneys, assistant state attorneys, statewide  
71 prosecutors, or assistant statewide prosecutors are exempt from  
72 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

77 e. The home addresses, dates of birth, and telephone  
78 numbers of general magistrates, special magistrates, judges of  
79 compensation claims, administrative law judges of the Division  
80 of Administrative Hearings, and child support enforcement  
81 hearing officers; the home addresses, telephone numbers, dates  
82 of birth, and places of employment of the spouses and children  
83 of general magistrates, special magistrates, judges of  
84 compensation claims, administrative law judges of the Division  
85 of Administrative Hearings, and child support enforcement  
86 hearing officers; and the names and locations of schools and day  
87 care facilities attended by the children of general magistrates,  
88 special magistrates, judges of compensation claims,  
89 administrative law judges of the Division of Administrative  
90 Hearings, and child support enforcement hearing officers are  
91 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
92 Constitution if the general magistrate, special magistrate,  
93 judge of compensation claims, administrative law judge of the  
94 Division of Administrative Hearings, or child support hearing  
95 officer provides a written statement that the general  
96 magistrate, special magistrate, judge of compensation claims,  
97 administrative law judge of the Division of Administrative  
98 Hearings, or child support hearing officer has made reasonable



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99 efforts to protect such information from being accessible  
100 through other means available to the public.

101 f. The home addresses, telephone numbers, dates of birth,  
102 and photographs of current or former human resource, labor  
103 relations, or employee relations directors, assistant directors,  
104 managers, or assistant managers of any local government agency  
105 or water management district whose duties include hiring and  
106 firing employees, labor contract negotiation, administration, or  
107 other personnel-related duties; the names, home addresses,  
108 telephone numbers, dates of birth, and places of employment of  
109 the spouses and children of such personnel; and the names and  
110 locations of schools and day care facilities attended by the  
111 children of such personnel are exempt from s. 119.07(1) and s.  
112 24(a), Art. I of the State Constitution.

113 g. The home addresses, telephone numbers, dates of birth,  
114 and photographs of current or former code enforcement officers;  
115 the names, home addresses, telephone numbers, dates of birth,  
116 and places of employment of the spouses and children of such  
117 personnel; and the names and locations of schools and day care  
118 facilities attended by the children of such personnel are exempt  
119 from s. 119.07(1) and s. 24(a), Art. I of the State  
120 Constitution.

121 h. The home addresses, telephone numbers, places of  
122 employment, dates of birth, and photographs of current or former  
123 guardians ad litem, as defined in s. 39.820; the names, home  
124 addresses, telephone numbers, dates of birth, and places of  
125 employment of the spouses and children of such persons; and the  
126 names and locations of schools and day care facilities attended  
127 by the children of such persons are exempt from s. 119.07(1) and



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128 s. 24(a), Art. I of the State Constitution, if the guardian ad  
129 litem provides a written statement that the guardian ad litem  
130 has made reasonable efforts to protect such information from  
131 being accessible through other means available to the public.

132 i. The home addresses, telephone numbers, dates of birth,  
133 and photographs of current or former juvenile probation  
134 officers, juvenile probation supervisors, detention  
135 superintendents, assistant detention superintendents, juvenile  
136 justice detention officers I and II, juvenile justice detention  
137 officer supervisors, juvenile justice residential officers,  
138 juvenile justice residential officer supervisors I and II,  
139 juvenile justice counselors, juvenile justice counselor  
140 supervisors, human services counselor administrators, senior  
141 human services counselor administrators, rehabilitation  
142 therapists, and social services counselors of the Department of  
143 Juvenile Justice; the names, home addresses, telephone numbers,  
144 dates of birth, and places of employment of spouses and children  
145 of such personnel; and the names and locations of schools and  
146 day care facilities attended by the children of such personnel  
147 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
148 Constitution.

149 j.(I) The home addresses, telephone numbers, dates of  
150 birth, and photographs of current or former public defenders,  
151 assistant public defenders, criminal conflict and civil regional  
152 counsel, and assistant criminal conflict and civil regional  
153 counsel; the home addresses, telephone numbers, dates of birth,  
154 and places of employment of the spouses and children of such  
155 defenders or counsel; and the names and locations of schools and  
156 day care facilities attended by the children of such defenders



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157 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
158 the State Constitution.

159 (II) The names of the spouses and children of the specified  
160 agency personnel identified in sub-sub-subparagraph (I) are  
161 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
162 Constitution. This sub-sub-subparagraph is subject to the Open  
163 Government Sunset Review Act in accordance with s. 119.15 and  
164 shall stand repealed on October 2, 2019, unless reviewed and  
165 saved from repeal through reenactment by the Legislature.

166 k. The home addresses, telephone numbers, and photographs  
167 of current or former investigators or inspectors of the  
168 Department of Business and Professional Regulation; the names,  
169 home addresses, telephone numbers, and places of employment of  
170 the spouses and children of such current or former investigators  
171 and inspectors; and the names and locations of schools and day  
172 care facilities attended by the children of such current or  
173 former investigators and inspectors are exempt from s. 119.07(1)  
174 and s. 24(a), Art. I of the State Constitution if the  
175 investigator or inspector has made reasonable efforts to protect  
176 such information from being accessible through other means  
177 available to the public. This sub-subparagraph is subject to the  
178 Open Government Sunset Review Act in accordance with s. 119.15  
179 and shall stand repealed on October 2, 2017, unless reviewed and  
180 saved from repeal through reenactment by the Legislature.

181 l. The home addresses and telephone numbers of county tax  
182 collectors; the names, home addresses, telephone numbers, and  
183 places of employment of the spouses and children of such tax  
184 collectors; and the names and locations of schools and day care  
185 facilities attended by the children of such tax collectors are



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186 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
187 Constitution if the county tax collector has made reasonable  
188 efforts to protect such information from being accessible  
189 through other means available to the public. This sub-  
190 subparagraph is subject to the Open Government Sunset Review Act  
191 in accordance with s. 119.15 and shall stand repealed on October  
192 2, 2017, unless reviewed and saved from repeal through  
193 reenactment by the Legislature.

194 m. The home addresses, telephone numbers, dates of birth,  
195 and photographs of current or former personnel of the Department  
196 of Health whose duties include, or result in, the determination  
197 or adjudication of eligibility for social security disability  
198 benefits, the investigation or prosecution of complaints filed  
199 against health care practitioners, or the inspection of health  
200 care practitioners or health care facilities licensed by the  
201 Department of Health; the names, home addresses, telephone  
202 numbers, dates of birth, and places of employment of the spouses  
203 and children of such personnel; and the names and locations of  
204 schools and day care facilities attended by the children of such  
205 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
206 the State Constitution if the personnel have made reasonable  
207 efforts to protect such information from being accessible  
208 through other means available to the public. This sub-  
209 subparagraph is subject to the Open Government Sunset Review Act  
210 in accordance with s. 119.15 and shall stand repealed on October  
211 2, 2019, unless reviewed and saved from repeal through  
212 reenactment by the Legislature.

213 n. The home addresses, telephone numbers, dates of birth,  
214 and photographs of current or former impaired practitioner



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215 consultants who are retained by an agency or current or former  
216 employees of an impaired practitioner consultant whose duties  
217 result in a determination of a person's skill and safety to  
218 practice a licensed profession; the names, home addresses,  
219 telephone numbers, dates of birth, and places of employment of  
220 the spouses and children of such consultants or their employees;  
221 and the names and locations of schools and day care facilities  
222 attended by the children of such consultants or employees are  
223 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
224 Constitution if a consultant or employee has made reasonable  
225 efforts to protect such information from being accessible  
226 through other means available to the public. This sub-  
227 subparagraph is subject to the Open Government Sunset Review Act  
228 in accordance with s. 119.15 and shall stand repealed on October  
229 2, 2020, unless reviewed and saved from repeal through  
230 reenactment by the Legislature.

231 o. The home addresses, telephone numbers, dates of birth,  
232 and photographs of current or former personnel employed in an  
233 agency's office of inspector general or internal audit  
234 department whose duties include auditing or investigating waste,  
235 fraud, abuse, theft, exploitation, or other activities that  
236 could lead to criminal prosecution or administrative discipline;  
237 the names, home addresses, telephone numbers, dates of birth,  
238 and places of employment of spouses and children of such  
239 personnel; and the names and locations of schools and day care  
240 facilities attended by the children of such personnel are exempt  
241 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
242 if the personnel have made reasonable efforts to protect such  
243 information from being accessible through other means available





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244 to the public. This sub-subparagraph is subject to the Open  
245 Government Sunset Review Act in accordance with s. 119.15 and  
246 shall stand repealed on October 2, 2021, unless reviewed and  
247 saved from repeal through reenactment by the Legislature.

248       3. An agency that is the custodian of the information  
249 specified in subparagraph 2. and that is not the employer of the  
250 officer, employee, justice, judge, or other person specified in  
251 subparagraph 2. shall maintain the exempt status of that  
252 information only if the officer, employee, justice, judge, other  
253 person, or employing agency of the designated employee submits a  
254 written request for maintenance of the exemption to the  
255 custodial agency.

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

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

264       Section 2. (1) The Legislature finds that it is a public  
265 necessity that the following identifying and location  
266 information be exempt from s. 119.07(1), Florida Statutes, and  
267 s. 24(a), Article I of the State Constitution, if the personnel  
268 have made reasonable efforts to protect such information from  
269 being accessible through other means available to the public:

270       (a) The home addresses, telephone numbers, dates of birth,  
271 and photographs of current or former personnel employed in an  
272 agency's office of inspector general or internal audit



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273 department whose duties include auditing or investigating waste,  
274 fraud, abuse, theft, exploitation, or other activities that  
275 could lead to criminal prosecution or administrative discipline;

276 (b) The names, home addresses, telephone numbers, dates of  
277 birth, and places of employment of spouses and children of such  
278 personnel; and

279 (c) The names and locations of schools and day care  
280 facilities attended by the children of such personnel.

281 (2) The Legislature finds that the release of such  
282 identifying and location information might place such personnel  
283 and their family members in danger of physical and emotional  
284 harm from disgruntled individuals who may react inappropriately  
285 to investigations, audits, and other actions carried out by such  
286 personnel, or to scrutiny of their business or professional  
287 practices. Audits and investigations done by such personnel can  
288 lead to employment termination, wage garnishment, and criminal  
289 prosecution, and persons under such audits and investigations  
290 have threatened such personnel, which resulted in an agency's  
291 having to heighten security by posting pictures of individuals  
292 who have made threats against such personnel, installing  
293 security cameras, and involving law enforcement. As a result,  
294 such personnel and their family members may become targets for  
295 acts of revenge by those who are investigated or audited. The  
296 risk continues after such personnel leave employment as a  
297 disgruntled individual may wait to commit an act of revenge  
298 until the employment of such personnel ends. The Legislature  
299 further finds that the harm that may result from the release of  
300 such personal identifying and location information outweighs any  
301 public benefit that may be derived from the disclosure of the



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302 information.

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

304

305 ===== T I T L E A M E N D M E N T =====

306 And the title is amended as follows:

307 Delete everything before the enacting clause

308 and insert:

309 A bill to be entitled

310 An act relating to public records; amending s.

311 119.071, F.S.; providing an exemption from public

312 records requirements for certain identifying and

313 location information of current or former personnel

314 employed in an agency's office of inspector general or

315 internal audit department whose duties include

316 auditing or investigating certain activities that

317 could lead to criminal prosecution or administrative

318 discipline, and the spouses and children thereof;

319 providing for future legislative review and repeal of

320 the exemption; providing a statement of public

321 necessity; providing an effective date.

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

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

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

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61 children of current or former justices and judges; and the names  
 62 and locations of schools and day care facilities attended by the  
 63 children of current or former justices and judges are exempt  
 64 from s. 119.07(1).

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

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

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

86 e. The home addresses, dates of birth, and telephone  
 87 numbers of general magistrates, special magistrates, judges of  
 88 compensation claims, administrative law judges of the Division  
 89 of Administrative Hearings, and child support enforcement

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

110 f. The home addresses, telephone numbers, dates of birth,  
 111 and photographs of current or former human resource, labor  
 112 relations, or employee relations directors, assistant directors,  
 113 managers, or assistant managers of any local government agency  
 114 or water management district whose duties include hiring and  
 115 firing employees, labor contract negotiation, administration, or  
 116 other personnel-related duties; the names, home addresses,  
 117 telephone numbers, dates of birth, and places of employment of  
 118 the spouses and children of such personnel; and the names and

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119 locations of schools and day care facilities attended by the  
 120 children of such personnel are exempt from s. 119.07(1) and s.  
 121 24(a), Art. I of the State Constitution.

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

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

141 i. The home addresses, telephone numbers, dates of birth,  
 142 and photographs of current or former juvenile probation  
 143 officers, juvenile probation supervisors, detention  
 144 superintendents, assistant detention superintendents, juvenile  
 145 justice detention officers I and II, juvenile justice detention  
 146 officer supervisors, juvenile justice residential officers,  
 147 juvenile justice residential officer supervisors I and II,

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

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

168 (II) The names of the spouses and children of the specified  
 169 agency personnel identified in sub-sub-subparagraph (I) are  
 170 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 171 Constitution. This sub-sub-subparagraph is subject to the Open  
 172 Government Sunset Review Act in accordance with s. 119.15 and  
 173 shall stand repealed on October 2, 2019, unless reviewed and  
 174 saved from repeal through reenactment by the Legislature.

175 k. The home addresses, telephone numbers, and photographs  
 176 of current or former investigators or inspectors of the

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177 Department of Business and Professional Regulation; the names,  
 178 home addresses, telephone numbers, and places of employment of  
 179 the spouses and children of such current or former investigators  
 180 and inspectors; and the names and locations of schools and day  
 181 care facilities attended by the children of such current or  
 182 former investigators and inspectors are exempt from s. 119.07(1)  
 183 and s. 24(a), Art. I of the State Constitution if the  
 184 investigator or inspector has made reasonable efforts to protect  
 185 such information from being accessible through other means  
 186 available to the public. This sub-subparagraph is subject to the  
 187 Open Government Sunset Review Act in accordance with s. 119.15  
 188 and shall stand repealed on October 2, 2017, unless reviewed and  
 189 saved from repeal through reenactment by the Legislature.

190 1. The home addresses and telephone numbers of county tax  
 191 collectors; the names, home addresses, telephone numbers, and  
 192 places of employment of the spouses and children of such tax  
 193 collectors; and the names and locations of schools and day care  
 194 facilities attended by the children of such tax collectors are  
 195 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 196 Constitution if the county tax collector has made reasonable  
 197 efforts to protect such information from being accessible  
 198 through other means available to the public. This sub-  
 199 subparagraph is subject to the Open Government Sunset Review Act  
 200 in accordance with s. 119.15 and shall stand repealed on October  
 201 2, 2017, unless reviewed and saved from repeal through  
 202 reenactment by the Legislature.

203 m. The home addresses, telephone numbers, dates of birth,  
 204 and photographs of current or former personnel of the Department  
 205 of Health whose duties include, or result in, the determination

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206 or adjudication of eligibility for social security disability  
 207 benefits, the investigation or prosecution of complaints filed  
 208 against health care practitioners, or the inspection of health  
 209 care practitioners or health care facilities licensed by the  
 210 Department of Health; the names, home addresses, telephone  
 211 numbers, dates of birth, and places of employment of the spouses  
 212 and children of such personnel; and the names and locations of  
 213 schools and day care facilities attended by the children of such  
 214 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 215 the State Constitution if the personnel have made reasonable  
 216 efforts to protect such information from being accessible  
 217 through other means available to the public. This sub-  
 218 subparagraph is subject to the Open Government Sunset Review Act  
 219 in accordance with s. 119.15 and shall stand repealed on October  
 220 2, 2019, unless reviewed and saved from repeal through  
 221 reenactment by the Legislature.

222 n. The home addresses, telephone numbers, dates of birth,  
 223 and photographs of current or former impaired practitioner  
 224 consultants who are retained by an agency or current or former  
 225 employees of an impaired practitioner consultant whose duties  
 226 result in a determination of a person's skill and safety to  
 227 practice a licensed profession; the names, home addresses,  
 228 telephone numbers, dates of birth, and places of employment of  
 229 the spouses and children of such consultants or their employees;  
 230 and the names and locations of schools and day care facilities  
 231 attended by the children of such consultants or employees are  
 232 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 233 Constitution if a consultant or employee has made reasonable  
 234 efforts to protect such information from being accessible

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235 through other means available to the public. This sub-  
 236 subparagraph is subject to the Open Government Sunset Review Act  
 237 in accordance with s. 119.15 and shall stand repealed on October  
 238 2, 2020, unless reviewed and saved from repeal through  
 239 reenactment by the Legislature.

240 o. The home addresses, telephone numbers, dates of birth,  
 241 and photographs of current or former agency personnel whose  
 242 duties include conducting internal audits; the names, home  
 243 addresses, telephone numbers, dates of birth, photographs, and  
 244 places of employment of spouses and children of such personnel;  
 245 and the names and locations of schools and day care facilities  
 246 attended by the children of such personnel are exempt from s.  
 247 119.07(1) and s. 24(a), Art. I of the State Constitution if the  
 248 personnel have made reasonable efforts to protect such  
 249 information from being accessible through other means available  
 250 to the public. This sub-subparagraph is subject to the Open  
 251 Government Sunset Review Act in accordance with s. 119.15 and  
 252 shall stand repealed on October 2, 2021, unless reviewed and  
 253 saved from repeal through reenactment by the Legislature.

254 3. An agency that is the custodian of the information  
 255 specified in subparagraph 2. and that is not the employer of the  
 256 officer, employee, justice, judge, or other person specified in  
 257 subparagraph 2. shall maintain the exempt status of that  
 258 information only if the officer, employee, justice, judge, other  
 259 person, or employing agency of the designated employee submits a  
 260 written request for maintenance of the exemption to the  
 261 custodial agency.

262 4. The exemptions in this paragraph apply to information  
 263 held by an agency before, on, or after the effective date of the

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264 exemption.

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

270 Section 2. (1) The Legislature finds that it is a public  
 271 necessity that the following identifying and location  
 272 information be exempt from public records requirements if  
 273 current or former agency personnel whose duties include  
 274 conducting internal audits have made reasonable efforts to  
 275 protect such information from being accessible through other  
 276 means available to the public:

277 (a) The home addresses, telephone numbers, dates of birth,  
 278 and photographs of current or former agency personnel whose  
 279 duties include conducting internal audits;

280 (b) The names, home addresses, telephone numbers, dates of  
 281 birth, photographs, and places of employment of spouses and  
 282 children of such personnel; and

283 (c) The names and locations of schools and day care  
 284 facilities attended by the children of such personnel.

285 (2) The Legislature finds that the release of such  
 286 identifying and location information might place such personnel  
 287 and their family members in danger of physical and emotional  
 288 harm from disgruntled individuals who may react inappropriately  
 289 to investigations, audits, and other actions carried out by such  
 290 personnel, or to scrutiny of their businesses or professional  
 291 practices. Internal audits can lead to termination, wage  
 292 garnishment, and criminal prosecution. Disturbed members of the



585-02230-16

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293 public have threatened personnel and performed Internet searches  
294 of them. Because of threats made against internal auditing  
295 personnel, agencies have had to institute security measures such  
296 as posting pictures of individuals who have made threats against  
297 personnel, placing security cameras, and calling law  
298 enforcement. As a result, such personnel and their family  
299 members may become targets for acts of revenge by those who are  
300 investigated or audited. The risk continues after such personnel  
301 leave employment as a disgruntled individual may wait to commit  
302 an act of revenge until the employment of such personnel ends.  
303 The Legislature further finds that the harm that may result from  
304 the release of such personal identifying and location  
305 information outweighs any public benefit that may be derived  
306 from the disclosure of the information.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Health and Human  
Services  
Communications, Energy, and Public Utilities  
Community Affairs  
Fiscal Policy  
Regulated Industries

### JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

### SENATOR JOSEPH ABRUZZO

Minority Whip  
25th District

January 19<sup>th</sup>, 2016

### The Honorable David Simmons

400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

I respectfully request Senate Bill 752, Public Records/Office of Inspector General Identifying and Location Information, be considered for placement on the Rules committee agenda. This piece of legislation provides an exemption from public records requirements for certain identifying and location information of current or former personnel of an agency's office of inspector general as their duty relates to conducting internal audits.

Please feel free to notify me if I can provide you with any additional information. Thank you in advance for your consideration.

Sincerely,

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

Joseph Abruzzo

Cc: John B. Phelps, *Staff Director*

#### REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: [www.flsenate.gov](http://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.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 762

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Abruzzo

**SUBJECT:** Public Records/Involuntary Assessment and Stabilization Petition

**DATE:** February 9, 2016      **REVISED:** \_\_\_\_\_

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	<b>Favorable</b>
2.	Kim	McVaney	GO	<b>Fav/CS</b>
3.	Crosier	Phelps	RC	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 762 amends s. 397.6815, F.S., to create a public records exemption for records related to the involuntary assessment and stabilization of a person impaired due to substance abuse under the Marchman Act. The exemption makes confidential and exempt from public disclosure requirements petitions, court orders, and related records, as well as personal identifying information on a docket, relating to Marchman Act Proceedings.

The confidential and exempt information may be released:

- With the approval of the respondent, or other specified individuals, if necessary to ensure continuity of the respondent's health care.
- Upon the court's order for good cause.
- To the Department of Corrections if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

The bill includes a public necessity statement and provides for retroactive application of the public records exemption.

Because this bill creates a new public records exemption, a two-thirds vote by both chambers is required for passage.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

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

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

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

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

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

### **The Marchman Act**

Section 397.301, F.S., creates the Hal. S. Marchman Alcohol and Other Drug Services Act (the “Marchman Act”). This act was created by the Legislature to provide assistance to substance abuse impaired persons through health and rehabilitative services. Currently, s. 397.6811, F.S., allows a petition for involuntary assessment and stabilization to be filed by a person’s spouse or guardian, any relative, a private practitioner, the director of a licensed service provider or any three adults who have personal knowledge of the person’s substance abuse impairment.

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

**Section 1** amends s. 397.6815, F.S., to provide that petitions for involuntary assessment and stabilization, court orders, and related documents filed with the court under this part are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. In addition, the bill makes personal identifying information on a docket held pursuant to the Marchman Act confidential and exempt from public disclosure. Petitions, orders, related documents and personal identifying information must be released under the following circumstances:

- With the approval of the respondent, or other specified individuals, if necessary to ensure continuity of the respondent’s health care.
- Upon the court’s order for good cause.
- To the Department of Corrections if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

The bill also provides that a copy of the petition and notice of hearing may be released to a guardian advocate,<sup>15</sup> which current law does not permit.

The bill provides for retroactive application of the public records exemption.<sup>16</sup>

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important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> A guardian advocate is a person who has been appointed by a circuit court for a person with developmental disabilities if that person lacks some decision making skills necessary for his or her care. In addition, a guardian advocate may also be appointed by voluntary petition. Section 393.12(2), F.S.

<sup>16</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla.2001).

**Section 2** provides a statement of public necessary as required by the State Constitution.<sup>17</sup> The public necessity statement provides the justification for making petitions, orders, related records, and personal identifying information on a docket confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution. The bill states that the news media have published details about people's struggles with substance abuse after obtaining Marchman Act records. The bill provides that the exemption is necessary because it protects a person's personal health information and sensitive personal information which, if released, could cause unwarranted damage to the person's reputation. Additionally, the knowledge that such information could be disclosed could have a chilling effect on the willingness of individuals to seek or comply with treatment.

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

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

The county/municipality mandates provision of Art. VII, section 18, of the State Constitution may apply because clerks of the court may incur additional costs relating to redacting information made confidential and exempt under this bill. However, an exemption may apply based on the limited fiscal impact that is anticipated to be incurred.

##### **B. Public Records/Open Meetings Issues:**

Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

The State Constitution requires the exemption to be no broader than necessary to accomplish the stated purpose of the law. The exemption is no broader than the public necessity statement. The public necessity statement appears to support the public policy for the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

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<sup>17</sup> Section 24(c), Art. I of the State Constitution.

C. **Government Sector Impact:**

Indeterminate. Clerks of court may incur additional costs associated with training court personnel and performing more redactions of personal identifying information from dockets. It is anticipated that these costs will be absorbed within the existing resources of the offices of the clerks of court.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 397.6815 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Governmental Oversight and Accountability on February 1, 2016:**

The CS makes the following changes:

- Removes references to the Open Government in the Sunshine Review Act (OGSR), as the OGSR is not required for records held solely by the State Court System pursuant to s. 119.15(2)(b), F.S.;<sup>18</sup>
- Expands the exemption to include court orders, related records, and personal identifying information will include information about the proceedings; and
- Modifies and strengthens the public necessity statement to conform to the exemption.

B. **Amendments:**

None.

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

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<sup>18</sup> The Open Government Sunset Review Act, s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions. The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment, unless the exemption is continued by the Legislature.

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

585-02888-16

2016762c1

A bill to be entitled

An act relating to public records; amending s. 397.6815, F.S.; providing an exemption from public records requirements for a petition for involuntary assessment and stabilization of a substance abuse impaired person, court orders, and related records, and personal identifying information on certain court dockets; providing exceptions; providing for release of a petition to a guardian advocate; providing retroactive application; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 397.6815, Florida Statutes, is amended to read:

397.6815 Involuntary assessment and stabilization; exemption; procedure.-

(1) Petitions for involuntary assessment and stabilization, court orders, and related records filed with or by the court under this part are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Personal identifying information on a docket held under this part is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) Petitions, court orders, related documents and personal identifying information shall be released, in addition to the persons identified in paragraph (4) (a):

(a) To appropriate persons if necessary to ensure the continuity of the respondent's health care, upon approval by the

Page 1 of 4

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

585-02888-16

2016762c1

respondent, the respondent's guardian, or, in the case of a minor, by the respondent's parent, guardian, legal custodian, or guardian advocate.

(b) To an agency or individual who has obtained a court order finding good cause for releasing the petition, order, related records or personal identifying information. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the respondent.

(c) To the Department of Corrections, without charge, upon request if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(4) Upon receipt and filing of the petition for the involuntary assessment and stabilization of a substance abuse impaired person by the clerk of the court, the court shall ascertain whether the respondent is represented by an attorney, and if not, whether, on the basis of the petition, an attorney should be appointed; and shall:

(a) ~~(1)~~ Provide a copy of the petition and notice of hearing to the respondent; the respondent's parent, guardian, ~~or~~ legal custodian, or guardian advocate, in the case of a minor; the respondent's attorney, ~~if known~~; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct pursuant to paragraph (3) (b), and have such petition and notice personally delivered to the respondent if he or she is a minor. The court shall also issue a summons to the person whose admission is sought and conduct a hearing within 10 days; or

Page 2 of 4

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



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2016762c1

61 ~~(b)(2)~~ Without the appointment of an attorney and, relying  
 62 solely on the contents of the petition, enter an ex parte order  
 63 authorizing the involuntary assessment and stabilization of the  
 64 respondent. The court may order a law enforcement officer or  
 65 other designated agent of the court to take the respondent into  
 66 custody and deliver him or her to the nearest appropriate  
 67 licensed service provider.

68 (5) This exemption shall be given retroactive application.

69 Section 2. The Legislature finds that it is a public  
 70 necessity that petitions for involuntary assessment and  
 71 stabilization of a person impaired by substance abuse, court  
 72 orders, and related records which are filed with or by a court  
 73 pursuant to chapter 397, Florida Statutes, and personal  
 74 identifying information on a court docket held pursuant to  
 75 chapter 397, Florida Statutes, be confidential and exempt from  
 76 disclosure under s. 119.07(1), Florida Statutes, and s. 24(a),  
 77 Article I of the State Constitution. The personal health of an  
 78 individual and his or her actual or alleged impairment by  
 79 substance abuse are intensely private matters. The media have  
 80 obtained Marchman Act records and have published details about  
 81 people's struggles with substance abuse on the Internet. The  
 82 content of such a record or personal identifying information  
 83 should not be made public merely because the record or personal  
 84 identifying information is filed with or by a court or placed on  
 85 a docket. Making these records and identifying information  
 86 confidential and exempt from disclosure will protect information  
 87 of a sensitive personal nature, the release of which could cause  
 88 unwarranted damage to the reputation of an individual, as well  
 89 as his or her family. Publication of personal identifying

Page 3 of 4

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585-02888-16

2016762c1

90 information on a physical or virtual docket, even if no other  
 91 record were published, would defeat the purpose of the  
 92 protection afforded by this exemption because a record of an  
 93 individual's substance abuse proceedings would be available to  
 94 the public. Further, the knowledge that sensitive personal  
 95 information is subject to disclosure could have a chilling  
 96 effect on the willingness of individuals to seek and comply with  
 97 substance abuse treatment services.

98 Section 3. This act shall take effect July 1, 2016.

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)

2/10/16

Meeting Date

762

Bill Number (if applicable)

Topic Public Records in Involuntary Assessment proceedings

Amendment Barcode (if applicable)

Name ~~Dan Hendrickson~~

Rick Smith (FOR DAN)

Job Title Chair, Advocacy Committee

Address 319 E Park Ave, PO Box 1201

Phone 850 570-1967

Street

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking:  For  Against  Information

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

Representing Big Bend Mental Health Coalition, NAMI Tallahassee

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/16

Meeting Date

762

Bill Number (if applicable)

Topic Public Records in Involuntary Assessment proceedings

Amendment Barcode (if applicable)

Name Dan Hendrickson Rick Smith (GORDAN)

Job Title Chair, Advocacy Committee

Address 319 E Park Ave, PO Box 1201

Phone 850 570-1967

Street

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

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

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

Representing Big Bend Mental Health Coalition, NAMI Tallahassee

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

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

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Health and Human  
Services  
Communications, Energy, and Public Utilities  
Community Affairs  
Fiscal Policy  
Regulated Industries

### JOINT COMMITTEE:

Joint Legislative Auditing *Committee, Alternating Chair*

### SENATOR JOSEPH ABRUZZO

Minority Whip  
25th District

February 1st, 2016

### The Honorable David Simmons

400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

I respectfully request Senate Bill 762, Public Records/Involuntary Assessment and Stabilization Petition, be considered for placement on Rules committee agenda. This piece of legislation provides an exemption from public records requirements for a petition for involuntary assessment and stabilization of a substance abuse impaired person.

Please feel free to notify me if I can provide you with any additional information. Thank you in advance for your consideration.

Sincerely,

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

Joseph Abruzzo

Cc: John B. Phelps, *Staff Director*

#### REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: [www.flsenate.gov](http://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/SB 846

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Abruzzo

SUBJECT: Divers-down Warning Devices

DATE: February 9, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Fav/CS</b>
2.	Askey	McKay	CM	<b>Favorable</b>
3.	Istler	Phelps	RC	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Technical Changes

**I. Summary:**

CS/SB 846 revises the requirements relating to divers-down flags and buoys. The bill defines the term “divers-down warning device” and revises the specification requirements for “divers-down flags” to expand the types of devices that divers must use to alert vessels that submerged divers are in the area.

**II. Present Situation:**

**Diving in Florida**

Florida’s coastlines, coral reefs, and springs provide a variety of dive sites and attract numerous visitors to the state each year. The waters of the state provide countless diving opportunities including shore-entry diving, wreck diving, cave diving, manatee sighting, and treasure hunting.<sup>1</sup> Section 327.331(1)(a), F.S., defines a “diver” as “any person who is wholly or partially submerged in the waters of the state and is equipped with a facemask and snorkel or underwater breathing apparatus.” To protect divers from collisions with boaters, all divers are required to prominently display a divers-down flag or buoy in the area in which diving occurs, other than when diving in an area customarily used for swimming only.<sup>2</sup>

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<sup>1</sup> See generally, Visit Florida website, *Florida’s Best Diving Spots*, (Dec. 2004), available at: <http://www.visitflorida.com/en-us/articles/2004/december/42-floridas-best-diving-spots.html> (last visited January 28, 2016).

<sup>2</sup> Section 327.331(2), F.S.

## Boating Accidents Involving Divers

According to the Fish and Wildlife Conservation Commission (FWC), from 2010 to 2014 there were 18 boating accidents reported to the FWC resulting in personal injuries or death involving divers or snorkelers in areas where a dive flag or buoy would be required. Of those there were:

- 6 accidents involving the diver being struck by another vessel and the dive flag was properly displayed. These accidents resulted in 7 injuries.
- 3 accidents involving the diver being struck by another vessel but a dive flag was not displayed, or not properly displayed. These accidents resulted in 1 fatality and 3 injuries.
- 9 accidents involved the diver being injured by their own vessel, either during boarding or the operator controlling the engine around them. These accidents resulted in 9 injuries.<sup>3</sup>

## Florida's Diver Law

To protect divers from vessels when they are diving, s. 327.331, F.S., regulates the types of warning devices that may be used and how and when they must be displayed. A divers-down flag must meet all of the following specifications:

- The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height.<sup>4</sup>
- The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.<sup>5</sup>
- The flag must consist of a divers-down symbol<sup>6</sup> on each side with a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner.<sup>7</sup>
- The minimum size for a divers-down flag that is displayed from a vessel or structure is 20 inches by 24 inches.<sup>8</sup>
- The minimum size for a divers-down flag that is displayed on a buoy or float towed by the diver is 12 inches by 12 inches.<sup>9</sup>



Figure 1

In 2014, s. 327.331, F.S., was amended to authorize divers to use divers-down buoys.<sup>10</sup> The term “divers-down buoy” is defined as “a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on three or four flat sides.”<sup>11</sup>

A diver may display a divers-down flag from a vessel or from a buoy.<sup>12</sup> If the divers-down flag is displayed from a vessel it must be displayed from the highest point of the vessel or such other location that provides that the visibility of the divers-down flag is not obstructed in any

<sup>3</sup> FWC, *Senate Bill 846 Agency Legislative Bill Analysis*, pg. 3 (Jan. 4, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).

<sup>4</sup> Section 327.331(1)(c)1., F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *See e.g.*, Figure 1.

<sup>7</sup> Section 327.331(1)(c)2., F.S.

<sup>8</sup> Section 327.331(1)(c)3., F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Ch. 2014-138, s. 1, Laws of Fla.

<sup>11</sup> Section 327.331(1)(b), F.S.

<sup>12</sup> Section 327.331, F.S.; *see also*, *Lanza v. Schriefer*, 2010 WL 2754327 (S.D. Fla. 2010) (finding that the statute does not require display of a divers-down flag on the vessel and on a buoy).

direction.<sup>13</sup> A divers-down buoy may not be used or displayed onboard a vessel and must be prominently visible on the water's surface when in use.<sup>14</sup>

On rivers, inlets, and navigation channels, divers are required to make a reasonable effort to stay within 100 feet of a divers-down flag or buoy and a person operating a vessel must make a reasonable effort to maintain a distance of at least 100 feet from a divers-down flag or buoy.<sup>15</sup> On all waters other than rivers, inlets, and navigation channels, divers must make a reasonable effort to stay within 300 feet of a divers-down flag or buoy and a person operating a vessel must make a reasonable effort to maintain a distance of at least 300 feet from any divers-down flag or buoy.<sup>16</sup> If a vessel, other than a law enforcement vessel or rescue vessel, approaches within 100 feet of divers-down flag or buoy on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag or buoy on waters other than a river, inlet, or navigation channel, the person operating the vessel must proceed no faster than is necessary to maintain headway and steerage.<sup>17</sup>

FWC-approved boater education or safety courses are required to include a component regarding diving vessels, awareness of divers in the water, divers-down flags and buoys, and the requirements of s. 327.331, F.S.<sup>18</sup> A violation relating to divers-down flags and buoys, except for a violation rising to the level of reckless or careless operation of a vessel, is a noncriminal infraction.<sup>19</sup> The civil penalty for a noncriminal infraction is \$50.<sup>20</sup>

### III. Effect of Proposed Changes:

CS/SB 846 amends s. 327.331, F.S., to define the term "divers-down warning device" to include divers-down flags, buoys, or other similar warning devices. This new term will provide divers with additional choices for signaling to boaters that there are divers in the water while remaining compliant with Florida law. The bill replaces the term "flag or buoy" with "warning device." A "divers-down warning device" must:

- Contain a divers-down symbol that is at least 12 inches by 12 inches in dimension when displayed from the water or is at least 20 by 24 inches when displayed from a vessel;
- Be designed for, and used by, divers and dive vessels as a means to notify nearby boaters of the presence of a diver in the waters of the immediate area; and
- Be prominently visible when in use.

Additionally, the bill revises the specification requirements for "divers-down flags." The bill clarifies that the "divers-down symbol" may be displayed on each face of the flag, rather than on each side. The bill authorizes "divers-down flags" to have more than one white diagonal stripe. However, if there are multiple stripes, the bill requires that all stripes be oriented in the same direction. Instead of requiring the flag to have a wire or other stiffener, the bill authorizes the

<sup>13</sup> Section 327.331(1)(c), F.S.

<sup>14</sup> Section 327.331(2), F.S.

<sup>15</sup> Section 327.331(4), F.S.

<sup>16</sup> Section 327.331(5), F.S.

<sup>17</sup> Section 327.331(6), F.S.

<sup>18</sup> Section 327.395(3), F.S.

<sup>19</sup> Section 327.73, F.S.

<sup>20</sup> *Id.*

flag to be otherwise constructed to ensure that the flag remains fully unfurled and extended in absence of a wind or breeze.

While the bill retains the size requirements for divers-down symbols that are displayed on the water (12 inches by 12 inches), the bill removes the requirement that buoys or floats used to display a divers-down flag be towed by the diver.

The bill requires a divers-down warning device that is displayed from a vessel to be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

The bill amends ss. 327.395 and 327.73, F.S., to replace the term “divers-down flags and buoys” with “divers-down warning devices.”

The bill reenacts s. 327.33(1), F.S., relating to the reckless or careless operation of a vessel, to incorporate the amendments made to s. 327.331, F.S.

The bill takes effect July 1, 2016.

#### **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:

As the bill expands the types of devices that may be used to satisfy Florida’s diver laws, businesses manufacturing or selling devices that were not previously authorized may experience an indeterminate increase in revenue from the sales of such devices. Alternatively, businesses that only manufacture devices that were previously authorized may experience an indeterminate decrease in sales and revenue from increased competition for device sales. The bill does not impose any additional requirements on



divers, it only expands the types of devices that may be used and, therefore, the bill does not have an impact on consumers.

C. **Government Sector Impact:**

The Fish and Wildlife Conservation Commission (FWC) will have to update and print boating safety and educational materials to incorporate divers-down warning devices, but FWC anticipates that these costs are expected to be minimal and can be absorbed with existing resources.<sup>21</sup>

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.331, 327.395, 327.73.

This bill reenacts section 327.33 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

**CS by Environmental Preservation and Conservation on January 20, 2016:**

The CS clarifies that a divers-down warning device displayed from a vessel must be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

B. **Amendments:**

None.

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

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<sup>21</sup> FWC, *Senate Bill 846 Agency Legislative Bill Analysis*, pg. 5 (Jan. 4, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).

By the Committee on Environmental Preservation and Conservation;  
and Senator Abruzzo

592-02358-16

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A bill to be entitled

An act relating to divers-down warning devices;  
amending s. 327.331, F.S.; revising the definitions of  
the terms "divers-down buoy," "divers-down flag," and  
"divers-down symbol"; defining the term "divers-down  
warning device"; expanding the types of indicators or  
devices allowed to be used to signal the presence of  
submerged divers; specifying requirements for divers-  
down warning devices; amending ss. 327.395 and 327.73,  
F.S.; conforming provisions to changes made by the  
act; reenacting s. 327.33(1), F.S., relating to  
reckless or careless operation of a vessel, to  
incorporate the amendment made to s. 327.331, F.S., in  
a reference thereto; providing an effective date.

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

Section 1. Section 327.331, Florida Statutes, is amended to  
read:

327.331 Divers; definitions; divers-down warning device  
~~flag or buoy~~ required; obstruction to navigation of certain  
waters; penalty.—

(1) As used in this section:

(a) "Diver" means a person who is wholly or partially  
submerged in the waters of the state and is equipped with a face  
mask and snorkel or underwater breathing apparatus.

(b) "Divers-down buoy" means a buoyant device, other than a  
vessel, which displays a divers-down symbol ~~of at least 12~~  
~~inches by 12 inches on three or four flat sides, which is~~  
~~prominently visible on the water's surface when in use.~~

(c) "Divers-down flag" means a flag that displays a divers-

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~~down symbol and that meets the following specifications:~~

~~1. Is~~ The flag must be square or rectangular. If  
~~rectangular, the length must not be less than the height, or~~  
~~more than 25 percent longer than the height. The flag must have~~  
~~a wire or other stiffener to hold it fully unfurled and extended~~  
~~in the absence of a wind or breeze.~~

~~2. The flag must consist of~~ and has a divers-down symbol on  
each face, side

~~2. Has with~~ a white diagonal stripes on each face which  
begin stripe that begins at the top, staff-side of the flag and  
extend extends diagonally to the lower opposite corner.

~~3. If rectangular, is of a length that is not less than the~~  
~~height or more than 25 percent longer than the height.~~

~~4. Has a wire, or other stiffener, or is otherwise~~  
~~constructed to ensure that it remains fully unfurled and~~  
~~extended in the absence of a wind or breeze.~~

~~3. The minimum size for any divers-down flag displayed on a~~  
~~buoy or float towed by the diver is 12 inches by 12 inches. The~~  
~~minimum size for any divers-down flag displayed from a vessel or~~  
~~structure is 20 inches by 24 inches.~~

~~4. Any divers-down flag displayed from a vessel must be~~  
~~displayed from the highest point of the vessel or such other~~  
~~location which provides that the visibility of the divers-down~~  
~~flag is not obstructed in any direction.~~

(d) "Divers-down symbol" means a rectangular or square red  
symbol with a white diagonal stripe. If rectangular, the length  
~~may must~~ not be less than the height or more than 25 percent  
longer than the height. The width of the stripe must be 25  
percent of the height of the symbol and the stripes must be

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61 oriented in the same direction if multiple stripes are  
62 displayed.

63 (e) "Divers-down warning device" means a divers-down flag,  
64 buoy, or other similar warning device that:

65 1. Contains a divers-down symbol that is at least 12 inches  
66 by 12 inches in dimension when displayed from the water or at  
67 least 20 by 24 inches in dimension when displayed from a vessel;

68 2. Is designed for, and used by, divers and dive vessels as  
69 a means to notify nearby boaters of the presence of a diver in  
70 the waters of the immediate area; and

71 3. Is prominently visible when in use.

72 (f) (e) "Underwater breathing apparatus" means any  
73 apparatus, whether self-contained or connected to a distant  
74 source of air or other gas, whereby a person wholly or partially  
75 submerged in water is enabled to obtain or reuse air or any  
76 other gas or gases for breathing without returning to the  
77 surface of the water.

78 (2) All divers must prominently display a divers-down  
79 warning device ~~flag or buoy~~ in the area in which the diving  
80 occurs, other than when diving in an area customarily used for  
81 swimming only. A divers-down buoy may not be used or displayed  
82 onboard a vessel.

83 (3) A diver or group of divers may not display one or more  
84 divers-down warning devices ~~flags or buoys~~ on a river, inlet, or  
85 navigation channel, except in case of emergency, in a manner  
86 that ~~which shall~~ unreasonably ~~constitutes~~ constitute a  
87 navigational hazard.

88 (4) Divers shall make reasonable efforts to stay within 100  
89 feet of a divers-down warning device ~~flag or buoy~~ on rivers,

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90 inlets, and navigation channels. A person operating a vessel on  
91 a river, inlet, or navigation channel must make a reasonable  
92 effort to maintain a distance of at least 100 feet from any  
93 divers-down warning device ~~flag or buoy~~.

94 (5) Divers must make reasonable efforts to stay within 300  
95 feet of a divers-down warning device ~~flag or buoy~~ on all waters  
96 other than rivers, inlets, and navigation channels. A person  
97 operating a vessel on waters other than a river, inlet, or  
98 navigation channel must make a reasonable effort to maintain a  
99 distance of at least 300 feet from any divers-down warning  
100 device ~~flag or buoy~~.

101 (6) A vessel other than a law-enforcement ~~law enforcement~~  
102 or rescue vessel that approaches within 100 feet of a divers-  
103 down warning device ~~flag or buoy~~ on a river, inlet, or  
104 navigation channel, or within 300 feet of a divers-down warning  
105 device ~~flag or buoy~~ on waters other than a river, inlet, or  
106 navigation channel, must proceed no faster than is necessary to  
107 maintain headway and steerageway.

108 (7) A divers-down warning device ~~flag or buoy~~ may not be  
109 displayed once all divers are aboard or ashore. A person may not  
110 operate any vessel displaying a divers-down warning device ~~flag~~  
111 unless the vessel has one or more divers in the water.

112 (8) A divers-down warning device displayed from a vessel  
113 must be displayed from the highest point of the vessel or  
114 another location that ensures that the visibility of the divers-  
115 down warning device is not obstructed from any direction.

116 (9) (8) Except as provided in s. 327.33, a violation of this  
117 section is a noncriminal infraction punishable as provided in s.  
118 327.73.

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119 Section 2. Subsection (3) of section 327.395, Florida  
120 Statutes, is amended to read:

121 327.395 Boating safety identification cards.—

122 (3) Any commission-approved boater education or boater  
123 safety course, course-equivalency examination developed or  
124 approved by the commission, or temporary certificate examination  
125 developed or approved by the commission must include a component  
126 regarding diving vessels, awareness of divers in the water,  
127 divers-down warning devices ~~flags and buoys~~, and the  
128 requirements of s. 327.331.

129 Section 3. Paragraph (u) of subsection (1) of section  
130 327.73, Florida Statutes, is amended to read:

131 327.73 Noncriminal infractions.—

132 (1) Violations of the following provisions of the vessel  
133 laws of this state are noncriminal infractions:

134 (u) Section 327.331, relating to divers-down warning  
135 devices ~~flags and buoys~~, except for violations meeting the  
136 requirements of s. 327.33.

137

138 Any person cited for a violation of any provision of this  
139 subsection shall be deemed to be charged with a noncriminal  
140 infraction, shall be cited for such an infraction, and shall be  
141 cited to appear before the county court. The civil penalty for  
142 any such infraction is \$50, except as otherwise provided in this  
143 section. Any person who fails to appear or otherwise properly  
144 respond to a uniform boating citation shall, in addition to the  
145 charge relating to the violation of the boating laws of this  
146 state, be charged with the offense of failing to respond to such  
147 citation and, upon conviction, be guilty of a misdemeanor of the

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148 second degree, punishable as provided in s. 775.082 or s.  
149 775.083. A written warning to this effect shall be provided at  
150 the time such uniform boating citation is issued.

151 Section 4. For the purpose of incorporating the amendment  
152 made by this act to section 327.331, Florida Statutes, in a  
153 reference thereto, subsection (1) of section 327.33, Florida  
154 Statutes, is reenacted to read:

155 327.33 Reckless or careless operation of vessel.—

156 (1) It is unlawful to operate a vessel in a reckless  
157 manner. A person is guilty of reckless operation of a vessel who  
158 operates any vessel, or manipulates any water skis, aquaplane,  
159 or similar device, in willful or wanton disregard for the safety  
160 of persons or property at a speed or in a manner as to endanger,  
161 or likely to endanger, life or limb, or damage the property of,  
162 or injure any person. Reckless operation of a vessel includes,  
163 but is not limited to, a violation of s. 327.331(6). Any person  
164 who violates a provision of this subsection commits a  
165 misdemeanor of the first degree, punishable as provided in s.  
166 775.082 or s. 775.083.

167

Section 5. This act shall take effect July 1, 2016.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-10-14

Meeting Date

846

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Bob Harris

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

Address 2618 Centennial Place

Phone 222-0720

Street

Tallahassee FL

32308

Email bharris@lawfla.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Driving Equipment & Marketing Assn. (DEMA)

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:

Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Health and Human  
Services  
Communications, Energy, and Public Utilities  
Community Affairs  
Fiscal Policy  
Regulated Industries

### JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

**SENATOR JOSEPH ABRUZZO**  
Minority Whip  
25th District

February 1<sup>st</sup>, 2016

**The Honorable David Simmons**  
416 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

I respectfully request **Senate Bill 846, Divers-Down Warning Devices**, be considered for placement on the Rules committee agenda. This piece of legislation expands the types of indicators or devices allowed to be used to signal the presence of submerged divers to further ensure their safety.

Please feel free to notify me if I can provide you with any additional information. Thank you in advance for your consideration.

Sincerely,

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

Joseph Abruzzo

Cc: John B. Phelps, *Staff Director*

### REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: [www.flsenate.gov](http://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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 914

INTRODUCER: Senator Detert

SUBJECT: Public Records/Identifying Medical and Personal Information

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Cochran</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

**I. Summary:**

SB 914 makes medical and personal identifying information of an applicant for, or a recipient of, the property tax exemption for totally and permanently disabled persons confidential and exempt from the public record disclosure and copying requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S.

This exemption applies to such information held by a property appraiser, the Department of Revenue, the tax collector, the Auditor General, or the Office of Program Policy Analysis and Government Accountability. This exemption has retroactive application.

The information may be released with the express written consent of the applicant or recipient or the legally authorized representative of such person, by court order upon showing of good cause, or to another agency in the performance of its duties.

The bill requires a two-thirds vote from each chamber for passage.

The bill becomes effective upon becoming law.

**II. Present Situation:**

**Public Records Law**

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

---

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

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

---

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

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

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

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

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.



When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

### **Open Government Sunset Review Act<sup>15</sup>**

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>16</sup> The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>17</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>18</sup>

- 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> 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 otherwise provided for by law.<sup>20</sup>

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<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> Section 119.15, F.S.

<sup>16</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>17</sup> Section 119.15(3), F.S.

<sup>18</sup> Section 119.15(6)(a), F.S.

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

<sup>20</sup> Section 119.15(7), F.S.

## Statutory Exemptions from Public Records Law

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule. Among the general exemptions set forth in s. 119.071(5), F.S., are exemptions for social security numbers,<sup>21</sup> bank account numbers,<sup>22</sup> and the identities of recipients of paratransit services.<sup>23</sup>

## General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>24</sup> The property appraiser annually determines the “just value”<sup>25</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>26</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes,<sup>27</sup> and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>28</sup>

The Florida Constitution authorizes the Legislature to provide an exemption for certain real estate owned by totally and permanently disabled persons.<sup>29</sup>

## Property Tax Exemption for Totally and Permanently Disabled Persons<sup>30</sup>

Section 196.101, F.S., provides that real estate used and owned as a homestead by a totally and permanently disabled person is exempt from taxation. To receive an exemption, persons must apply with their county property appraiser.<sup>31</sup> If filing for the first time, a certificate of total and

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<sup>21</sup> Section 119.071(5)(a), F.S.

<sup>22</sup> Section 119.071(5)(b), F.S.

<sup>23</sup> Section 119.071(5)(h), F.S.

<sup>24</sup> Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>25</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>26</sup> *See* s. 192.001(2) and (16), F.S.

<sup>27</sup> FLA. CONST. art. VII, s. 1(a)

<sup>28</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>29</sup> FLA. CONST. art. VII, s. 3(b).

<sup>30</sup> Section 196.101, F.S.

<sup>31</sup> Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

permanent disability (Form DR-416)<sup>32</sup> from two licensed doctors of this state or from the United States Department of Veterans Affairs is required.<sup>33</sup> For the legally blind, one of the two may be a certificate from a Florida-licensed optometrist (Form DR-416B).<sup>34,35</sup> Real estate used and owned as a homestead by a quadriplegic, less any portion used for commercial purposes, is exempt from all ad valorem taxation.<sup>36</sup>

Real estate used and owned as a homestead by a paraplegic, hemiplegic, or other totally and permanently disabled person, who must use a wheelchair for mobility or who is legally blind, is exempt from taxation if the gross household income is below the current gross income limit of \$27,732.<sup>37,38</sup> Gross income is the income, including veterans' and social security benefits, of all persons residing in the homestead.<sup>39</sup>

### Confidentiality of Returns

Section 193.074, F.S., states:

All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the department, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the provisions of s. 119.07(1).

### III. Effect of Proposed Changes:

**Section 1** makes confidential and exempt from public disclosure medical and personal identifying information of an applicant for or a recipient of the property tax exemption for totally and permanently disabled persons under s. 196.101, F.S., which is held by the property appraiser, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability. The applicant or recipient of the tax exemption must make reasonable efforts to protect such information from being accessible through other means available to the public.

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<sup>32</sup> Florida Department of Revenue, *Physician's Certification of Total and Permanent Disability*, <http://dor.myflorida.com/dor/property/forms/current/dr416.pdf> (last visited January 6, 2016).

<sup>33</sup> Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

<sup>34</sup> Florida Department of Revenue, *Optometrist's Certification of Total and Permanent Disability*, <http://dor.myflorida.com/dor/property/forms/current/dr416b.pdf> (last visited January 6, 2016).

<sup>35</sup> Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited January 8, 2016).

<sup>39</sup> Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

Information made confidential and exempt by this paragraph shall be disclosed with the express written consent of the applicant or recipient or the legally authorized representative of such person, by court order upon showing of good cause, or to another agency in the performance of its duties. The information disclosed to another agency will remain confidential and exempt.

This exemption has retroactive application.

This section is subject to the OGSR and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature.

**Section 2** establishes the Legislature's purpose for enacting the new exemption, finding that it is a public necessity to exempt the medical and personal identifying information of an applicant for or a recipient of a property tax exemption for totally and permanently disabled persons under s. 196.101, F.S., from public records requirements. The release of an applicant's or recipient's medical or personal identifying information allows the public to gain knowledge of sensitive medical information, and could be used to harass or target these individuals in a negative way. The harm that may result from the release of this private information outweighs any public benefit that may be derived from disclosure of the information.

**Section 3** provides that the act shall take effect upon becoming a law.

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

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

The county/municipality mandates provision of Art. VII, section 18, of the State Constitution may apply because county tax collectors and county property appraisers may incur additional costs relating to redacting information made confidential and exempt under this bill. However, an exemption may apply based on the limited fiscal impact that is anticipated to be incurred.

##### **B. Public Records/Open Meetings Issues:**

Pursuant to Article I, s. 24(c) of the State Constitution, all public records exemptions require a two-thirds vote by both the Senate and the House. The public necessity statement sufficiently supports the breadth of the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Indeterminate. The property appraiser, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability will have to spend resources for training its staff and redacting information, however, these costs can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Detert

28-00315A-16

2016914\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; creating an exemption from public  
 4 records requirements for medical and personal  
 5 identifying information of an applicant for or a  
 6 recipient of the property tax exemption for totally  
 7 and permanently disabled persons; providing for  
 8 retroactive application; authorizing disclosure of  
 9 such information under certain conditions; providing  
 10 for future legislative review and repeal of the  
 11 exemption; providing a statement of public necessity;  
 12 providing an effective date.

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

15  
 16 Section 1. Paragraph (1) is added to subsection (5) of  
 17 section 119.071, Florida Statutes, to read:

18 119.071 General exemptions from inspection or copying of  
 19 public records.—

20 (5) OTHER PERSONAL INFORMATION.—

21 (1)1. Medical and personal identifying information of an  
 22 applicant for or a recipient of the property tax exemption for  
 23 totally and permanently disabled persons under s. 196.101, which  
 24 is held by the property appraiser, the Department of Revenue,  
 25 the tax collector, the Auditor General, and the Office of  
 26 Program Policy Analysis and Government Accountability is  
 27 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 28 of the State Constitution, if the applicant or recipient has  
 29 made reasonable efforts to protect such information from being

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

28-00315A-16

2016914\_\_

30 accessible through other means available to the public.

31 2. The exemption in this paragraph applies to information  
 32 held by the property appraiser, the Department of Revenue, the  
 33 tax collector, the Auditor General, and the Office of Program  
 34 Policy Analysis and Government Accountability before, on, or  
 35 after the effective date of this exemption.

36 3. Information made confidential and exempt by this  
 37 paragraph shall be disclosed:

38 a. With the express written consent of the applicant or  
 39 recipient or the legally authorized representative of such  
 40 applicant or recipient;

41 b. By court order upon showing of good cause; or

42 c. To another agency in the performance of its duties and  
 43 responsibilities. If disclosed to another agency, the  
 44 information shall retain its confidential and exempt status.

45 4. This paragraph is subject to the Open Government Sunset  
 46 Review Act in accordance with s. 119.15 and shall stand repealed  
 47 on October 2, 2021, unless reviewed and saved from repeal  
 48 through reenactment by the Legislature.

49 Section 2. The Legislature finds that it is a public  
 50 necessity that medical and personal identifying information of  
 51 an applicant for or a recipient of a property tax exemption for  
 52 totally and permanently disabled persons under s. 196.101,  
 53 Florida Statutes, which is held by the property appraiser, the  
 54 Department of Revenue, the tax collector, the Auditor General,  
 55 and the Office of Program Policy Analysis and Government  
 56 Accountability, be made confidential and exempt from public  
 57 records requirements. A totally and permanently disabled person  
 58 is required to file an application containing medical and

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28-00315A-16

2016914\_\_

59 personal identifying information and a certification of his or  
60 her disability in order to claim a property tax exemption. The  
61 exemption is granted only to those who have a severe physical or  
62 mental disability. The Legislature finds that the release of an  
63 applicant's or a recipient's medical or personal identifying  
64 information allows the public to gain knowledge of sensitive,  
65 personal medical information that might be used to harass,  
66 embarrass, or humiliate the individual based on his or her  
67 disability. In addition, the release of an applicant's or a  
68 recipient's medical or personal identifying information would  
69 enable nefarious characters to gain knowledge of the applicant's  
70 or recipient's vulnerabilities, and such knowledge could result  
71 in these individuals becoming targets of acts of violence and  
72 other crimes. The Legislature further finds that the harm that  
73 may result from the release of such medical and personal  
74 identifying information outweighs any public benefit that may be  
75 derived from disclosure of the information.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 1, 2016

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I respectfully request that **Senate Bill #914**, relating to Public Records/Identifying Medical and Personal Information, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

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Senator Nancy C. Detert  
Florida Senate, District 28



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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1004

INTRODUCER: Community Affairs Committee and Senator Hays

SUBJECT: Security System Plans

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Fav/CS</b>
2.	Kim	McVaney	GO	<b>Favorable</b>
3.	Present	Phelps	RC	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1004 provides additional circumstances under which information regarding security system plans which is otherwise confidential and exempt may be disclosed. Such information may now be disclosed to the property owner or leaseholder; in furtherance of the official duties and responsibilities of the agency holding the information; to another local, state, or federal agency in the furtherance of that agency's official duties and responsibilities; or upon a showing of good cause before a court of competent jurisdiction.

**II. Present Situation:**

**Public Records Law**

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

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

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may

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<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

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

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

### **Security System Exemptions from Public Access or Disclosure**

Exemptions for security systems and surveillance techniques are governed by ss. 281.301 and 119.071, F.S.

Section 281.301, F.S., provides that:

Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure. This information can be disclosed to the owner, leaseholder or to a government agency to fight terrorism.

Section 119.071(3)(a)2., F.S., provides that:

(3) SECURITY.—

2. A security system plan or portion thereof for:

Any property owned by or leased to the state or any of its political subdivisions; or

Any privately owned or leased property

held by any agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

As used in s. 119.071(3)(a), F.S., the term “security system plan” includes “all... records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems.”<sup>15</sup> Security system plans also include threat assessments and response plans; evacuation and sheltering plans and training manuals.<sup>16</sup>

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<sup>14</sup> 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).

<sup>15</sup> Section 119.071(3)(a)1.a., F.S.

<sup>16</sup> Section 119.071(3)(a)1., F.S.

### Statutory Interpretation by the Courts and the Attorney General

The Attorney General and the courts have both weighed in on the issues relating to exemptions for security systems. The Attorney General concluded that the names and addresses of applicants for permits to install security systems would be information that would reveal the existence of a security system, and, therefore would be exempt from public disclosure.<sup>17</sup> Furthermore, the Second District Court of Appeal, in *Critical Intervention Services, Inc. v. City of Clearwater*, cited with approval the discussion in that Attorney General Opinion finding that the identity of residential and business alarm permit holders was exempt from public disclosure.<sup>18</sup> The court found that the plain language of ss. 281.301 and 119.071, F.S., makes confidential all records revealing a security system and stated that disclosure of such information “would imperil the safety of persons and property.”<sup>19</sup>

The Fifth District Court of Appeal in *Central Florida Regional Transportation Authority d/b/a Lynx v. Post-Newsweek Stations, Orlando, Inc.*, considered whether security tapes from cameras installed on transit authority buses were confidential as revealing the security system.<sup>20</sup> Citing to s. 281.301, F.S., which states that records that directly relate to or reveal information about security systems are confidential, the court concluded that the video footage captured by the bus camera “directly relates to and reveals information about a security system.”<sup>21</sup> The court found that the videos “which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system” and therefore, are confidential and exempt from public inspection.<sup>22</sup>

In similar fashion, the Attorney General opined that surveillance tapes that are made by a security system are confidential and exempt from the disclosure requirements of the public records law under ss. 281.301 and 119.071, F.S.<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071, F.S., to expand the circumstances under which an agency may disclose information regarding security system plans. Information made confidential and exempt under paragraph (a) may now be disclosed:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

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<sup>17</sup> Op. Atty Gen. Fla. 2004-08 (2004).

<sup>18</sup> *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195 (Fla. 2d DCA 2005).

<sup>19</sup> *Id.* at 1197.

<sup>20</sup> *Cent. Florida Reg’l Transp. Auth. V. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d. 401 (Fla. 5<sup>th</sup> DCA 2015), reh’g denied (Feb. 26, 2015).

<sup>21</sup> *Id.* at 405.

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

<sup>23</sup> Op. Atty Gen. Fla. 2015-06 (2015).

**Section 2** amends s. 281.301, F.S., to expand the circumstances under which information relating to the security systems for any property owned by or leased to the state or any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), F.S., may be disclosed. Such information may be disclosed:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

**Section 3** provides that the bill is effective upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 119.071 and 281.301 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Community Affairs on January 19, 2016:**

Removes language that expanded the public records exemption for security plans to include video or audio recordings from a security system camera. The corresponding public necessity statement and OGSR language related to the expanded exemption are also removed.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senator Hays

578-02303A-16

20161004c1

1 A bill to be entitled  
 2 An act relating to security system plans; amending s.  
 3 119.071, F.S.; revising exceptions to a public records  
 4 exemption; amending s. 281.301, F.S.; providing  
 5 exceptions to a public records exemption; providing an  
 6 effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Paragraph (a) of subsection (3) of section  
 11 119.071, Florida Statutes, is amended to read:  
 12 119.071 General exemptions from inspection or copying of  
 13 public records.—  
 14 (3) SECURITY.—  
 15 (a)1. As used in this paragraph, the term "security system  
 16 plan" includes all:  
 17 a. Records, information, photographs, audio and visual  
 18 presentations, schematic diagrams, surveys, recommendations, or  
 19 consultations or portions thereof relating directly to the  
 20 physical security of the facility or revealing security systems;  
 21 b. Threat assessments conducted by any agency or any  
 22 private entity;  
 23 c. Threat response plans;  
 24 d. Emergency evacuation plans;  
 25 e. Sheltering arrangements; or  
 26 f. Manuals for security personnel, emergency equipment, or  
 27 security training.  
 28 2. A security system plan or portion thereof for:  
 29 a. Any property owned by or leased to the state or any of  
 30 its political subdivisions; or  
 31 b. Any privately owned or leased property  
 32

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

578-02303A-16

20161004c1

33 held by an agency is confidential and exempt from s. 119.07(1)  
 34 and s. 24(a), Art. I of the State Constitution. This exemption  
 35 is remedial in nature, and it is the intent of the Legislature  
 36 that this exemption apply to security system plans held by an  
 37 agency before, on, or after the effective date of this  
 38 paragraph.  
 39 3. Information made confidential and exempt by this  
 40 paragraph may be disclosed ~~by the custodian of public records~~  
 41 ~~to:~~  
 42 a. To the property owner or leaseholder; or  
 43 b. In furtherance of the official duties and  
 44 responsibilities of the agency holding the information; Another  
 45 state or federal agency to prevent, detect, guard against,  
 46 respond to, investigate, or manage the consequences of any  
 47 attempted or actual act of terrorism, or to prosecute those  
 48 persons who are responsible for such attempts or acts  
 49 c. To another local, state, or federal agency in  
 50 furtherance of that agency's official duties and  
 51 responsibilities; or  
 52 d. Upon a showing of good cause before a court of competent  
 53 jurisdiction.  
 54 Section 2. Section 281.301, Florida Statutes, is amended,  
 55 to read:  
 56 281.301 Security systems; records and meetings exempt from  
 57 public access or disclosure.—  
 58 (1) Information relating to the security systems for any  
 59 property owned by or leased to the state or any of its political  
 60 subdivisions, and information relating to the security systems  
 61 for any privately owned or leased property which is in the

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578-02303A-16

20161004c1

62 possession of any agency as defined in s. 119.011(2), including  
63 all records, information, photographs, audio and visual  
64 presentations, schematic diagrams, surveys, recommendations, or  
65 consultations or portions thereof relating directly to or  
66 revealing such systems or information, and all meetings relating  
67 directly to or that would reveal such systems or information are  
68 confidential and exempt from ss. 119.07(1) and 286.011 and other  
69 laws and rules requiring public access or disclosure.

70 (2) Information made confidential and exempt by this  
71 section may be disclosed:

72 (a) To the property owner or leaseholder;

73 (b) In furtherance of the official duties and  
74 responsibilities of the agency holding the information;

75 (c) To another local, state, or federal agency in  
76 furtherance of that agency's official duties and  
77 responsibilities; or

78 (d) Upon a showing of good cause before a court of  
79 competent jurisdiction.

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/10/2016  
Meeting Date

1004  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Consultant

Address 205 South Adams St  
Street

Phone 931-265-8999

Tallahassee FL 32301  
City State Zip

Email lauren@ericksconsultants.com

Speaking:  For  Against  Information

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

Representing SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY  
- Ericks Consultants

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/10/16  
Meeting Date

1004  
Bill Number (if applicable)

Topic Public Records / Video

Amendment Barcode (if applicable)

Name Lisa Bacost

Job Title Executive Director

Address PO Box 10168  
Street

Phone \_\_\_\_\_

Treey FL 32317  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Public Transportation Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1004

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date \_\_\_\_\_  
Topic Security System Footage  
Name Sarah Carroll

Job Title \_\_\_\_\_  
Address 123 S. Adams  
*Street*  
32301  
*City State Zip*

Phone \_\_\_\_\_  
Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



# 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  
Committee on Rules  
CC: John B. Phelps, Staff Director  
Cissy DuBose, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 1004- Public Records/ Security System Plans

**Date:** February 1, 2016

The above referenced bill passed through Government Oversight and Accountability this afternoon. In the interest of keeping the bill moving forward, I am asking that you please consider adding it to your next agenda "if received." This is the bill's last stop. 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](http://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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1278

INTRODUCER: Governmental Oversight and Accountability Committee, Judiciary Committee and Senator Ring

SUBJECT: Public Records/Petitions to Determine Incapacity

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1278 creates new exemptions from the public records inspection and access requirements of Art. 1, s. 24(a) of the State Constitution and s. 119.07(1), F.S. This bill makes confidential and exempt pleadings, orders, and personal identifying information on a docket relating to Baker Act proceedings. The information may be disclosed upon request to certain enumerated persons involved in the proceedings or when directed by the court.

The exemptions will be repealed on October 2, 2021, unless reviewed and reenacted by the Legislature before that date. The bill also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

The bill takes effect on July 1, 2016.

## II. Present Situation:

### Public Records Law

#### *The Florida Constitution*

Under the State Constitution, the public is guaranteed the right of access to 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 persons acting on their behalf, unless the record is exempted or specifically made confidential.<sup>1</sup> This right of access to records and meetings specifically includes the legislative, executive, and judicial branches of government, their agencies and departments, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

#### *The Florida Statutes*

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., which is known as the Public Records Act, provides that the public may access legislative and executive branch records.<sup>3</sup> According to the Public Records Act, a public record includes most any document, recording, or other material, regardless of its physical form or characteristics or how it is transmitted.<sup>4</sup> Anyone who violates the Public Records Act may be punished by civil or criminal penalties or suspension and removal or impeachment from office.<sup>5</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>6</sup> An exemption must specifically state the public necessity justifying the exemption and must be tailored narrowly to accomplish the stated purpose of the law.<sup>7</sup> Additionally, the exemption must pass by two-thirds vote of the House and Senate.<sup>8</sup> An exemption that does not meet these criteria may be held unconstitutional.<sup>9</sup>

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

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

<sup>3</sup> 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 s. 11.0431, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>5</sup> Section 119.10, F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c).

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

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

<sup>9</sup> *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (1999). In this case the Florida Supreme Court determined that a public meeting exemption was unconstitutional because the statement of public necessity did not define essential terms and the exemption was written too broadly. The Court also decided that it could not move into the legislature's realm to narrow the exemption to save the statute.

When the Legislature creates a public records exemption, it may classify the record as “confidential and exempt” or “exempt.” When designated as “confidential and exempt,” the record may be released by the records custodian only under the limited circumstances defined by the Legislature. When a record is designated as “exempt,” it may be released at the discretion of the records custodian.

### **The Florida Mental Health Act, also known as The Baker Act**

The Legislature adopted the Florida Mental Health Act, also known as The Baker Act, in 1971.<sup>10</sup> It is designed to help people receive treatment who are suffering with mental, emotional, and behavioral disorders. Baker Act proceedings provide people with emergency services, sometimes through temporary detention, to obtain a mental health evaluation and treatment. The treatment may be voluntary or involuntary. The Baker Act requires that programs offer comprehensive services to people who need intensive short-term treatment and continued treatment to aid in their recovery. The Baker Act also provides protections and rights for people examined or treated for mental illness. Legal procedures are established for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

### **Confidentiality of Records under the Baker Act**

The concern has been expressed that while “clinical records”<sup>11</sup> under the Baker Act are designated and maintained as confidential by the clerk of the court, it is not clear whether other Baker Act records are open to the public for review.<sup>12</sup> There appears to be a difference of opinion among various clerks of court as to what is and what is not exempt from disclosure. If the petitions, orders, and identifying information in this bill were all classified as confidential and exempt, then there would be uniformity among the clerks of the court in administering these provisions statewide.

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

### **Newly Created Public Records Exemptions in the Baker Act**

CS/CS/SB 1278 provides a public records exemption for pleadings, orders, related records, and personal identifying information contained on a docket held pursuant to the Baker Act, which would include involuntary examinations,<sup>13</sup> involuntary outpatient placement,<sup>14</sup> and involuntary

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<sup>10</sup> Chapter 71-131, s. 1, Laws of Fla. The Baker Act is contained in Part I of chapter 394, Florida Statutes.

<sup>11</sup> Section 394.4615, F.S., states that “[a] clinical record is confidential and exempt from the provisions of s. 119.07(1).” The Judicial Administration Rules also provide for the confidentiality of clinical records under the Baker Act. Fla. R. Jud. Admin. 2.420(d)(1)(B)(viii).

<sup>12</sup> Section 394.455(3), F.S. Clinical records are defined as being all parts of the record required to be maintained, including medical records, progress notes, charts, admission and discharge data, and other information recorded by the facility that pertains to the patient’s hospitalization or treatment. In lay terms, this is often characterized as records requiring a medical signature.

<sup>13</sup> Section 394.463, F.S.

<sup>14</sup> Section 394.4655, F.S.

inpatient placement.<sup>15</sup> This exemption also applies to voluntary admissions, if judicial involvement were necessary.<sup>16</sup>

The bill makes confidential and exempt from public inspection and copying those pleadings, orders, and related records, and personal information contained on a docket, held pursuant to the Baker Act.

A clerk of court may release the confidential and exempt record or information to the following people, upon request:

- The petitioner or the petitioner's attorney;
- The respondent or the respondent's attorney;
- The respondent's guardian or guardian advocate;
- The respondent's parent, guardian, custodian, or guardian advocate<sup>17</sup> if the respondent is a minor;
- The respondent's health care practitioner;
- The respondent's patient representative;<sup>18</sup> or
- An agency or person who is authorized to receive clinical records.

In addition, a clerk may release confidential and exempt records or information to a person who is authorized to view records and who has obtained a court order finding that there is good cause to release the records. In order to determine if there is good cause, a court must use a balancing test to weigh the need for the information to be disclosed against the harm to the respondent.

The bill provides that anyone who receives Baker Act records or personal identifying information must maintain its confidential and exempt status.

The bill has retroactive application.

The bill also includes a public necessity statement, as required by s. 24(c), Art. I of the State Constitution. The public necessity statement of the bill provides that Baker Act records and personal identifying information should be confidential and exempt from public disclosure in order to preserve the privacy of a person who has or is alleged to have mental illness. A person's health and mental health are intensely private matters, and the exemption will protect sensitive personal information which may cause unwarranted damage to an individual reputation if it is

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<sup>15</sup> Section 394.467, F.S.

<sup>16</sup> Section 394.4625, F.S.

<sup>17</sup> A guardian advocate is a person who has been appointed by a circuit court for a person with developmental disabilities if that person lacks some decision making skills necessary for his or her care. In addition, a guardian advocate may also be appointed by voluntary petition. Section 393.12(2), F.S.

<sup>18</sup> Section 408.051, F.S., provides that patient representative "means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient's health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient's surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; the attorney for the patient's surviving spouse, parent, or adult child; or the attorney for the parent or guardian of a surviving minor child."



released. In addition, the public necessity statement provides that publication of a docket containing personal identifying information is confidential and exempt because it is a record of a Baker Act proceeding and should also be protected. Finally, the public necessity statement provides that public dissemination of sensitive personal information would have a chilling effect on people who may wish to seek or comply with mental health treatment.

This bill takes effect July 1, 2016.

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

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

The county/municipality mandates provision of Art. VII, section 18, of the State Constitution may apply because clerks of the court may incur additional costs relating to redacting information made confidential and exempt under this bill. However, an exemption may apply based on the limited fiscal impact that is anticipated to be incurred.

##### **B. Public Records/Open Meetings Issues:**

Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

The State Constitution requires the exemption to be no broader than necessary to accomplish the stated purpose of the law. The exemption is no broader than the public necessity statement. The public necessity statement appears to support the public policy for the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

Indeterminate. Clerks of court may incur additional costs associated with training court personnel and performing more redactions of personal identifying information from dockets. It is anticipated that these costs will be absorbed within the existing resources of the offices of the clerks of court.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following section 394.4615 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 February 1, 2016:**

The CS/CS makes the following changes:

- Consolidates three exemptions into one central location for the entire Baker Act;
- Removes referenced to the Open Government in the Sunshine Review Act (OGSR), as the OGSR is not required for records held solely by the State Court System pursuant to s. 119.15(2)(b), F.S.;<sup>19</sup>
- Expands the exemption to include pleading other than the petition, so that responses filed the person who is being Baker Acted are not public, and any supplementary pleadings are included in the exemption;
- Expands the exemption to include related records, such as recording of the proceeding or any notes taken by a clerk;
- Provides that the clerk of court may release court records to the petitioner; the petitioner’s counsel; the respondent’s guardian advocate; a minor’s parents, guardians, legal custodian, or guardian advocate;
- Provides a ‘good cause’ standard for release of records;
- Provides that personal identifying information on a docket relating to a Baker Act proceeding is confidential and exempt;
- Modifies and strengthens the public necessity statement to conform to the exemption; and,
- Provides for retroactive application of the exemption.

**CS by Judiciary on January 20, 2016:**

The committee substitute makes technical changes to ss. 394.4655(3)(d) and 394.467(3)(b), F.S. by adding the phrase “under this section.” The court has not been mentioned at this time in the chronology of the sections, so for clarity, the sentence is

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<sup>19</sup> The Open Government Sunset Review Act, s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions. The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment, unless the exemption is continued by the Legislature.

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rephrased to state that “The petition and any order entered by the court *under this section* are confidential and exempt . . .”

Also, the singular verb “is” is replaced with the plural verb “are” for correct subject-verb agreement in the first sentence of s. 394.467(3)(b), F.S.

**B. Amendments:**

None.

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

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By the Committees on Governmental Oversight and Accountability;  
and Judiciary; and Senator Ring

585-02889-16

20161278c2

A bill to be entitled

An act relating to public records; amending s. 394.4615, F.S.; providing an exemption from public records requirements for pleadings, orders, and related records, and personal identifying information on a docket, held pursuant to part I of ch. 394, F.S., relating to mental health services; authorizing the clerk of the court to disclose the records and information to specified persons upon request; providing for retroactive application; requiring a person, an agency, or an entity that receives certain information to maintain it as confidential and exempt; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 394.4615, Florida Statutes, is amended to read:

394.4615 ~~Clinical records~~, Confidentiality.-

(1) CLINICAL RECORDS.-

(a) ~~(1)~~ A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by express and informed consent, by the patient or the patient's guardian or guardian advocate or, if the patient is deceased, by the patient's personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either

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

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authorized or unauthorized disclosure to any person, organization, or agency.

(b) ~~(2)~~ The clinical record shall be released when:

1. ~~(a)~~ The patient or the patient's guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient's guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care.

2. ~~(b)~~ The patient is represented by counsel and the records are needed by the patient's counsel for adequate representation.

3. ~~(c)~~ The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

4. ~~(d)~~ The patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families, and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(c) ~~(3)~~ Information from the clinical record may be released in the following circumstances:

1. ~~(a)~~ When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

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61 ~~2.(b)~~ When the administrator of the facility or secretary  
 62 of the department deems release to a qualified researcher as  
 63 defined in administrative rule, an aftercare treatment provider,  
 64 or an employee or agent of the department is necessary for  
 65 treatment of the patient, maintenance of adequate records,  
 66 compilation of treatment data, aftercare planning, or evaluation  
 67 of programs.

68  
 69 For the purpose of determining whether a person meets the  
 70 criteria for involuntary outpatient placement or for preparing  
 71 the proposed treatment plan pursuant to s. 394.4655, the  
 72 clinical record may be released to the state attorney, the  
 73 public defender or the patient's private legal counsel, the  
 74 court, and to the appropriate mental health professionals,  
 75 including the service provider identified in s.  
 76 394.4655(6)(b)2., in accordance with state and federal law.

77 (d)~~(4)~~ Information from clinical records may be used for  
 78 statistical and research purposes if the information is  
 79 abstracted in such a way as to protect the identity of  
 80 individuals.

81 (e)~~(5)~~ Information from clinical records may be used by the  
 82 Agency for Health Care Administration, the department, and the  
 83 Florida advocacy councils for the purpose of monitoring facility  
 84 activity and complaints concerning facilities.

85 (f)~~(6)~~ Clinical records relating to a Medicaid recipient  
 86 shall be furnished to the Medicaid Fraud Control Unit in the  
 87 Department of Legal Affairs, upon request.

88 (g)~~(7)~~ Any person, agency, or entity receiving information  
 89 pursuant to this subsection ~~section~~ shall maintain such

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90 information as confidential and exempt from the provisions of s.  
 91 119.07(1).

92 (h)~~(8)~~ Any facility or private mental health practitioner  
 93 who acts in good faith in releasing information pursuant to this  
 94 subsection ~~section~~ is not subject to civil or criminal liability  
 95 for such release.

96 (i)~~(9)~~ ~~Nothing in~~ This subsection does not ~~section is~~  
 97 ~~intended to~~ prohibit a ~~the~~ parent or next of kin of a person who  
 98 is held in or treated under a mental health facility or program  
 99 from requesting and receiving information limited to a summary  
 100 of that person's treatment plan and current physical and mental  
 101 condition. Release of such information shall be in accordance  
 102 with the code of ethics of the profession involved.

103 (j)~~(10)~~ Patients shall have reasonable access to their  
 104 clinical records, unless such access is determined by the  
 105 patient's physician to be harmful to the patient. If the  
 106 patient's right to inspect his or her clinical record is  
 107 restricted by the facility, written notice of such restriction  
 108 shall be given to the patient and the patient's guardian,  
 109 guardian advocate, attorney, and representative. In addition,  
 110 the restriction shall be recorded in the clinical record,  
 111 together with the reasons for it. The restriction of a patient's  
 112 right to inspect his or her clinical record shall expire after 7  
 113 days but may be renewed, after review, for subsequent 7-day  
 114 periods.

115 (k)~~(11)~~ A ~~Any~~ person who fraudulently alters, defaces, or  
 116 falsifies the clinical record of a ~~any~~ person receiving mental  
 117 health services in a facility subject to this part, or causes or  
 118 procures any of these offenses to be committed, commits a

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119 misdemeanor of the second degree, punishable as provided in s.  
120 775.082 or s. 775.083.

121 (2) COURT RECORDS.—

122 (a) All pleadings, orders, and related records, and  
123 personal identifying information on a docket, held pursuant to  
124 this part are confidential and exempt from s. 119.07(1) and s.  
125 24(a), Art. I of the State Constitution.

126 (b) Pleadings, orders, and related records, and personal  
127 identifying information on a docket, made confidential and  
128 exempt by this subsection may be disclosed by the clerk of the  
129 court, upon request, to:

130 1. The petitioner.

131 2. The petitioner's attorney.

132 3. The respondent.

133 4. The respondent's attorney.

134 5. The respondent's guardian or guardian advocate, if  
135 applicable.

136 6. In the case of a minor respondent, the respondent's  
137 parent, guardian, legal custodian, or guardian advocate.

138 7. The respondent's treating health care practitioner.

139 8. The respondent's health care surrogate or proxy.

140 9. The respondent's patient representative.

141 10. A person or an entity authorized to view records and  
142 who has obtained a court order finding that there is good cause  
143 to release the records. In determining whether there is good  
144 cause for disclosure, the court shall weigh the need for the  
145 information to be disclosed against the possible harm of  
146 disclosure to the respondent.

147 11. An agency or a person authorized to receive clinical

585-02889-16

20161278c2

148 records pursuant to paragraphs (1)(b) and (1)(c).

149 (c) The exemption under this subsection applies  
150 retroactively.

151 (d) A person, an agency, or an entity receiving information  
152 pursuant to this subsection shall maintain such information as  
153 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
154 of the State Constitution.

155 Section 2. The Legislature finds that it is a public  
156 necessity to make confidential and exempt from s. 119.07(1),  
157 Florida Statutes, and s. 24(a), Article I of the State  
158 Constitution, all pleadings, orders, and related records, and  
159 personal identifying information on a docket, held pursuant to  
160 part I of chapter 394, Florida Statutes, in order to preserve  
161 the privacy of the individual who is or who is alleged to have a  
162 mental illness. An individual's personal health and mental  
163 health are intensely private matters. Making the pleadings,  
164 orders, and related records, and personal identifying  
165 information on a docket, of an individual who is subject to part  
166 I of chapter 394, Florida Statutes, confidential and exempt from  
167 disclosure will protect information of a sensitive personal  
168 nature, the release of which could cause unwarranted damage to  
169 the individual's reputation. Publication of personal identifying  
170 information of such an individual on a physical or virtual  
171 docket, even if no other records were published, would defeat  
172 the purpose and protections afforded by this exemption because a  
173 record of the individual's mental health proceedings would be  
174 available to the public. The Legislature further finds that the  
175 public disclosure of such pleadings, orders, and related  
176 records, and personal identifying information on a docket, would

585-02889-16

20161278c2

177 produce undue harm to an individual who has a mental illness or  
178 is alleged to have a mental illness. Furthermore, the knowledge  
179 that sensitive personal information is subject to public  
180 dissemination would have a chilling effect on the willingness of  
181 individuals to seek or comply with mental health treatment.

182 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/16

Meeting Date

1278

Bill Number (if applicable)

Topic Public Records in Baker Act proceedings

Amendment Barcode (if applicable)

Name Dan Hendrickson RICK SMITH (FOR DAN)

Job Title Chair, Advocacy Committee

Address 319 E Park Ave, PO Box 1201

Phone 850 570-1967

Street

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

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

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

Representing Big Bend Mental Health Coalition, NAMI Tallahassee

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

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

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/10/16  
Meeting Date

SB1278  
Bill Number (if applicable)

Topic SB1278

Amendment Barcode (if applicable)

Name Staci Jagoe

Job Title Student at University of West Florida

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email saj12@students.uwf.edu

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)

2/10/2016

*Meeting Date*

1278

*Bill Number (if applicable)*

Topic Baker Act Proceedings

*Amendment Barcode (if applicable)*

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Phone 850.488.6850

*Street*

Tallahassee

Florida

32301

Email robertrammell45@gmail.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Children, Families, and Elder Affairs  
Commerce and Tourism

**SENATOR JEREMY RING**

29th District

January 13, 2016

Senator David Simmons, Chair  
Committee on Rules  
403 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

I appreciate you including SB 1278, relating to Public Records/ Baker Act Proceedings, on the Rules agenda. Unfortunately, I will be presenting a bill in another committee at that time. Therefore, I respectfully request that my Legislative Assistant Joel Ramos be allowed to present the bill on my behalf.

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

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7048

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Client Records and Donor Information Collected by Regional Autism Centers

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Crosier</u>	<u>Hendon</u>		<b>CF Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Crosier</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

SB 7048 continues the public records exemption for Florida's seven regional autism centers by removing the October 2, 2016 repeal date. The exemption provides that all records relating to a client of an autism center and the client's family are confidential and exempt from public record requirements. The exemption also provides that the personal identifying information of donors or prospective donors who wish to be anonymous is confidential and exempt.

Since the bill does not expand or create an exemption to public records law, the bill requires a majority vote of each chamber for passage.

The bill takes effect on October 1, 2016.

## II. Present Situation:

### Public Records Law

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

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

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

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may

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<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

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

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

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

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

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

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>17</sup>

- 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

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<sup>14</sup> 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).

<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> FLA. CONST., art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.

## Regional Autism Centers

In 2002, the Legislature established six regional autism centers<sup>20</sup> (center) throughout the state, adding a seventh in 2005.<sup>21</sup> The seven centers are located at the:

- College of Medicine at Florida State University;<sup>22</sup>
- College of Medicine at the University of Florida;<sup>23</sup>
- University of Florida Health Science Center at Jacksonville;<sup>24</sup>
- Louis de la Parte Florida Mental Health Institute at the University of South Florida;<sup>25</sup>
- Mailman Center for Child Development and the Department of Psychology at the University of Miami;<sup>26</sup>
- College of Health and Public Affairs at the University of Central Florida;<sup>27</sup> and
- Department of Exceptional Student Education at Florida Atlantic University.<sup>28</sup>

Current law requires the centers to provide nonresidential resources and training services to persons of all ages and all levels of intellectual functioning who have autism,<sup>29</sup> an autistic-like disability, a dual sensory impairment, a sensory impairment with other handicapping conditions, or a pervasive developmental disorder that is not otherwise specified.<sup>30</sup> Each center must be operationally and fiscally independent and provide services within its geographical region of the state.<sup>31</sup> Additionally, each center must coordinate services within and between state agencies, local agencies, and school districts. However, services offered by the center may not be duplicative of those offered by the agencies or school districts.<sup>32</sup>

Each center must provide expertise in autism, autistic-like behaviors, and sensory impairments; individual and direct family assistance; technical assistance and consultation services;

<sup>20</sup> Chapter 2002-387, s.202, Laws of Fla.

<sup>21</sup> Chapter 2005-49, s.1, Laws of Fla.

<sup>22</sup> The College of Medicine at Florida State University serves Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties. Section 1004.55(1)(a), F.S.

<sup>23</sup> The College of Medicine at the University of Florida serves Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union Counties. Section 1004.55(1)(b), F.S.

<sup>24</sup> The University of Florida Health Science Center at Jacksonville serves Baker, Clay, Duval, Flagler, Nassau, and St. Johns Counties. Section 1004.55(1)(c), F.S.

<sup>25</sup> The Louis de la Parte Florida Mental Health Institute at the University of South Florida serves Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. Section 1004.55(1)(d), F.S.

<sup>26</sup> The Mailman Center for Child Development and the Department of Psychology at the University of Miami services Broward, Miami-Dade, and Monroe Counties, Section 1004.55(1)(e), F.S.

<sup>27</sup> The College of Health and Public Affairs at the University of Central Florida services Brevard, Lake, Orange, Osceola, Seminole, Sumter, and Volusia Counties. Section 1004.55(1)(f), F.S.

<sup>28</sup> The Department of Exceptional Student Education at Florida Atlantic University services Palm Beach, Martin, St. Lucie, Okeechobee, and Indian River Counties. Section 1004.55(1)(g), F.S.

<sup>29</sup> Section 393.063(3), F.S., defines “autism” as a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

<sup>30</sup> Section 1004.55(1), F.S.

<sup>31</sup> *Id.*

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

professional training programs; public education programs; coordination and dissemination of local and regional information regarding available resources; and support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.<sup>33</sup>

### **Public Record Exemptions under Review**

In 2011, the Legislature created public record exemptions for the centers.<sup>34</sup> All records that relate to the client of a center who receives the center's services or participates in center activities are confidential and exempt from public record requirements. The public record exemption also applies to records that relate to the client's family. In addition, personal identifying information of a donor or prospective donor to a center who desires to remain anonymous is confidential and exempt from public record requirements.<sup>35</sup>

Upon request, the center must provide a copy of the client's individual record to the client, if he or she is competent, or to the client's parent or legal guardian, if he or she is incompetent.<sup>36</sup>

A center may release the confidential and exempt records relating to a client or the client's family as follows:

- To physicians, attorneys, or governmental entities having need of the confidential and exempt information to aid a client, as authorized by the client, if competent, or the client's parent or legal guardian if the client is incompetent.<sup>37</sup>
- In response to a subpoena or to persons authorized by order of the court.<sup>38</sup>
- To the State Board of Education or the Board of Governors of the State University System when the director of the center deems it necessary for the treatment of a client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

The center may release information contained in the confidential and exempt records in the following instances, provided that personal identifying information of the client or the client's family is removed:

- To a person engaged in bona fide research if that person agrees to sign a confidentiality agreement with the center, maintain the confidentiality of the information received, and, to the extent permitted by law and after the research has concluded, destroy any confidential and exempt information obtained.<sup>39</sup>
- By the director of the center or the director's designee for statistical and research purposes provided that any confidential and exempt information is removed in the reporting of such statistical or research data.<sup>40</sup>

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<sup>33</sup> Section 1004.55(4), F.S.

<sup>34</sup> Chapter 2011-221, Laws of Fla.; codified as s. 1004.55(6), F.S.

<sup>35</sup> Section 1004.55(6)(a)1, F.S.

<sup>36</sup> Section 1004.55(6)(b), F.S.

<sup>37</sup> Section 1004.55(6)(a)2., F.S.

<sup>38</sup> Section 1004.55(6)(a)3.a., F.S.

<sup>39</sup> Section 1004.55(6)(a)3.b., F.S.

<sup>40</sup> Section 1004.55(6)(a)3.a., F.S.



The 2011 public necessity statement provides that the public record exemption for records relating to a client or the client's family is a public necessity because:

Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. For these reasons, the individual's expectation of and right to privacy in all matters regarding his or her personal health necessitates this exemption.<sup>41</sup>

The public necessity statement further provides that release of records relating to a client or the client's family could be defamatory or could cause unwarranted damage to the name or reputation of the client or the client's family. It also provides that:

Protecting such records ensures an environment in which the discussion of the condition of autism or related disorders can be conducted in a free and open manner, thus enabling individuals with autism and their families to receive appropriate diagnostic and treatment information and cope more effectively with the enormous challenges posed by neurodevelopmental disorders and sensory impairments.<sup>42</sup>

With regard to the public record exemption for personal identifying information of a donor or prospective donor to the center, the 2011 public necessity statement provides that:

If the identity of a prospective or actual donor who desires to remain anonymous is subject to disclosure, there is a chilling effect on donations because donors are concerned about disclosure of personal information leading to theft and, in particular, identity theft, including personal safety and security.<sup>43</sup>

Pursuant to the Open Government Sunset Review Act, the public record exemptions will repeal on October 2, 2016, unless reenacted by the Legislature.<sup>44</sup>

### **Staff Review of the Exemptions**

During the 2015 interim, professional staff of the Senate Children, Families and Elder Affairs Committee sent questionnaires to each center as part of the Open Government Sunset Review process. All respondents recommended reenactment of the exemption without changes.<sup>45</sup> The centers indicated that the public record exemption for records relating to a client or the client's family provides the clients of the centers with the security of knowing that sensitive information about themselves or their child is protected from a public records request. This ensures the integrity of the relationship between the client and the center.<sup>46</sup> In addition, a center's response

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<sup>41</sup> Section 1004.55(6)(a)4.a., F.S.

<sup>42</sup> Section 1004.55(6)(a)4.b., F.S.

<sup>43</sup> Ch. 2011-221, s. 2, Laws of Fla.

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

<sup>45</sup> The surveys are on file with the Senate Committee on Children, Families, and Elder Affairs.

<sup>46</sup> *Id.* at question 11.

provided that the public record exemption for donor information is important because many of the donors are clients or are family member of clients.<sup>47</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 1004.55, F.S., to save from repeal the public record exemptions for regional autism centers. The bill removes the scheduled repeal of the public records exemptions, thereby continuing:

- The public record exemption for all records relating to a client of the center or the client's family; and
- The public record exemption for personal identifying information of a donor or prospective donor to the center who desires to remain anonymous.

**Section 2** provides an effective date of October 1, 2016.

### IV. Constitutional Issues:

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

#### C. Government Sector Impact:

None.

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<sup>47</sup> *Id.* at question 12.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1004.55(6), of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By the Committee on Children, Families, and Elder Affairs

586-02131-16

20167048\_\_

1                                   A bill to be entitled  
 2       An act relating to a review under the Open Government  
 3       Sunset Review Act; amending s. 1004.55, F.S., which  
 4       provides an exemption from public records requirements  
 5       for information relating to client records and donor  
 6       information collected by regional autism centers;  
 7       removing the scheduled repeal of the exemption;  
 8       providing an effective date.  
 9  
 10   Be It Enacted by the Legislature of the State of Florida:  
 11  
 12       Section 1. Subsection (6) of section 1004.55, Florida  
 13   Statutes, is amended to read:  
 14       1004.55 Regional autism centers; public record exemptions.—  
 15       (6) (a) *Client records*.—  
 16       1. All records that relate to a client of a regional autism  
 17   center who receives the services of a center or participates in  
 18   center activities, and all records that relate to the client's  
 19   family, are confidential and exempt from s. 119.07(1) and s.  
 20   24(a), Art. I of the State Constitution.  
 21       2. A client who receives the services of a center, if  
 22   competent, or the client's parent or legal guardian if the  
 23   client is incompetent, shall be provided with a copy of the  
 24   client's individual record upon request.  
 25       3. A regional autism center may release the confidential  
 26   and exempt records as follows:  
 27       a. To physicians, attorneys, or governmental entities  
 28   having need of the confidential and exempt information to aid a  
 29   client, as authorized by the client, if competent, or the  
 30   client's parent or legal guardian if the client is incompetent.  
 31       b. In response to a subpoena or to persons authorized by  
 32   order of court.

Page 1 of 2

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

586-02131-16

20167048\_\_

33                                   c. To the State Board of Education or the Board of  
 34   Governors of the State University System when the director of  
 35   the center deems it necessary for the treatment of the client,  
 36   maintenance of adequate records, compilation of treatment data,  
 37   or evaluation of programs.  
 38       4. Provided that personal identifying information of a  
 39   client or the client's family has been removed, a regional  
 40   autism center may release information contained in the  
 41   confidential and exempt records ~~as follows~~:  
 42       a. to a person engaged in bona fide research if that person  
 43   agrees to sign a confidentiality agreement with the regional  
 44   autism center, agrees to maintain the confidentiality of the  
 45   information received, and, to the extent permitted by law and  
 46   after the research has concluded, destroy any confidential  
 47   information obtained.  
 48       5.b. The director of the center or his or her designee may  
 49   release information for statistical and research purposes ~~by the~~  
 50   ~~director of the center or designee~~, provided that any  
 51   confidential and exempt information is removed in the reporting  
 52   of such statistical or research data.  
 53       (b) *Donor information*.—Personal identifying information of  
 54   a donor or prospective donor to a regional autism center who  
 55   desires to remain anonymous is confidential and exempt from s.  
 56   119.07(1) and s. 24(a), Art. I of the State Constitution.  
 57       ~~(c) Review and repeal. This subsection is subject to the~~  
 58   ~~Open Government Sunset Review Act in accordance with s. 119.15~~  
 59   ~~and shall stand repealed on October 2, 2016, unless reviewed and~~  
 60   ~~saved from repeal through reenactment by the Legislature.~~  
 61       Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

## SENATOR ELEANOR SOBEL

33rd District

February 1, 2016

Senator David Simmons  
Chair of Committee on Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Simmons,

This letter is to request that **SB 7048**, relating to a **OGSR/Client Records and Donor Information Collected by Regional Autism Centers**, be placed on the agenda of the next scheduled meeting of the Committee on Rules. SB 7048 amends provisions which provide an exemption from public records requirements for information relating to client records and donor information collected by regional autism centers.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel  
State Senator, 33rd District

Cc: John Phelps, Cissy DuBose, Valerie Clarke, Diane Suddes, Carolyn Grzan

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

**SENATOR ELEANOR SOBEL**  
33rd District

February 10, 2016

Senator David Simmons  
Chair of the Committee on Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Chairman Simmons:

This letter is to inform you that my Legislative Aide Jeffrey Scala will be presenting on my behalf for SB7048 in the Committee on Rules today. I will be chairing the Committee on Children, Families and Elder Affairs at this time. Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel  
State Senator, 33rd District

Cc: John Phelps, Cissy Dubose

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 250

INTRODUCER: Judiciary Committee and Senator Lee

SUBJECT: Family Law

DATE: February 9, 2016

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 250 revises the law on parental time-sharing with minor children.

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. Consistent with existing legislative intent, the bill establishes a presumption that approximately equal timesharing with a child by both parents is in the child's best interest.

Current law provides a list of factors for the court to apply in determining or modifying time-sharing, based on the best interests of the child. This bill instead, provides that these factors are to be used in determining whether a party has overcome the statutory presumption of equal timesharing.

The bill adds two factors to the list for the court to consider in determining whether a party has overcome the presumption favoring equal time-sharing, which are:

- The amount of time-sharing requested by each parent; and
- The frequency with which a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would otherwise provide care.

The bill requires a court to support an order that provides for unequal timesharing with written findings of fact.

## II. Present Situation:

### Parenting and Time-sharing

#### *Florida Law*

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”<sup>1</sup> Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.<sup>2</sup> In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of factors.

Factors for the court to consider in determining the best interest of the child include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child’s school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.<sup>3</sup>

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.<sup>4</sup>

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<sup>1</sup> Section 61.13(2)(c)1., F.S.

<sup>2</sup> Section 61.13 (2)(c)2., F.S.

<sup>3</sup> Section 61.13(3), F.S.

<sup>4</sup> Section 61.13(3)(t), F.S.



### ***Equal Time-sharing in other States***

No state has required the court to order equal time-sharing or joint custody of minor children. A number of states, in addition to Florida, provide in law a presumption that joint custody is in the best interest of the child. These states are the District of Columbia, Idaho, Minnesota, New Mexico, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin. Other states provide the presumption only if the parents agree. These states are Alabama, California, Connecticut, Maine, Michigan, Mississippi, Nevada, New Hampshire, and Vermont.<sup>5</sup>

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody.<sup>6</sup> The South Dakota Legislature passed a law that permits the court to order joint physical custody when the court has awarded joint legal custody if it is in the best interest of the child.<sup>7</sup> The Utah Legislature enacted a rebuttable presumption for joint legal custody. Grounds for rebutting the presumption include domestic violence and physical or mental needs of a parent or child.<sup>8</sup>

### **Presumption in Law**

A presumption in law is a type of a rule of evidence calling for a certain result in a case. A presumption may be rebuttable or irrebuttable. A rebuttable presumption is an “inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence.”<sup>9</sup> An irrebuttable presumption may not be overcome.

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

The bill provides additional guidelines for the court to use in determining a time-sharing schedule of a minor child.

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. Consistent with existing legislative intent, this bill creates a rebuttable presumption that approximately equal timesharing with a minor child by both parents is in the best interest of the child. A party may overcome the presumption by providing evidence based on factors that affect the welfare and interests of the child and the circumstance of the family.

Current law provides a list of factors for the court to consider in establishing or modifying a time-sharing schedule, based on the best interests of the child. In addition to the factors presently provided in law, this bill adds the following:

- The amount of timesharing requested by each parent; and
- The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

---

<sup>5</sup> National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).

<sup>6</sup> AR s. 901.

<sup>7</sup> South Dakota House Bill 1055 (Chapter 141).

<sup>8</sup> Utah HB 88 (Chapter 269); HB 107 (Chapter 271).

<sup>9</sup> BLACK'S LAW DICTIONARY, (10th ed. 2014).

The bill also makes some revisions to the existing factors. Under existing law, a court must consider the demonstrated capacity of a parent undertaking various activities. The bill allows a court to consider the disposition of a parent to perform different parenting roles after a divorce.

Under the bill, if the initial permanent timesharing schedule does not provide for approximately equal time-sharing, the court order must include written findings of fact justifying its order for unequal timesharing.

The bill takes effect October 1, 2016.

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

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

The bill does not affect cities or counties.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill creates a presumption that equal time-sharing is presumed to be in the best interest of a child. Assuming that placing a presumption in law simplifies time-sharing actions, parties to a time-sharing action may spend less on litigation costs.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 61.13 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 January 26, 2016:**

The CS:

- Removes all provisions relating to alimony and the collaborative law process;
- Leaves intact all provisions on time-sharing, including language providing that approximately equal time-sharing is presumed to be in the best interest of the child;  
and
- Provides a later effective date of October 1, 2016.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Lee

590-02644-16

2016250c1

A bill to be entitled

An act relating to parenting and time-sharing; amending s. 61.13, F.S.; creating a presumption that approximately equal time-sharing by both parents is in the best interest of the child; revising a finite list of factors that a court must evaluate when determining whether the presumption of approximately equal time-sharing is overcome; requiring a court order to be supported by written findings of fact under certain circumstances; prohibiting the modification of a determination of parental responsibility, a parenting plan, or a time-sharing schedule unless certain determinations are made; providing an effective date.

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

Section 1. Subsection (3) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the primary consideration.

(a) Approximately equal time-sharing with a minor child by both parents is presumed to be in the best interest of the child. In determining whether the presumption is overcome, the court shall evaluate the evidence based on A determination of parental responsibility, a parenting plan, or a time-sharing

Page 1 of 5

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

590-02644-16

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~~schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating~~ all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, ~~but not limited to:~~

~~1.(a)~~ The demonstrated capacity or ~~and~~ disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

~~2.(b)~~ The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

~~3.(c)~~ The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

~~4.(d)~~ The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

~~5.(e)~~ The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to ~~carry out effectuate~~ the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

~~6.(f)~~ The moral fitness of the parents.

~~7.(g)~~ The mental and physical health of the parents.

~~8.(h)~~ The home, school, and community record of the child.

~~9.(i)~~ The reasonable preference of the child, if the court

Page 2 of 5

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

590-02644-16

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62 deems the child to be of sufficient intelligence, understanding,  
63 and experience to express a preference.

64 ~~10.(j)~~ The demonstrated knowledge, capacity, ~~or and~~  
65 disposition of each parent to be informed of the circumstances  
66 of the minor child, including, but not limited to, the child's  
67 friends, teachers, medical care providers, daily activities, and  
68 favorite things.

69 ~~11.(k)~~ The demonstrated capacity ~~or and~~ disposition of each  
70 parent to provide a consistent routine for the child, such as  
71 discipline, and daily schedules for homework, meals, and  
72 bedtime.

73 ~~12.(l)~~ The demonstrated capacity of each parent to  
74 communicate with the other parent and keep the other parent  
75 informed of issues and activities regarding the minor child, and  
76 the willingness of each parent to adopt a unified front on all  
77 major issues when dealing with the child.

78 ~~13.(m)~~ Evidence of domestic violence, sexual violence,  
79 child abuse, child abandonment, or child neglect, regardless of  
80 whether a prior or pending action relating to those issues has  
81 been brought. If the court accepts evidence of prior or pending  
82 actions regarding domestic violence, sexual violence, child  
83 abuse, child abandonment, or child neglect, the court must  
84 specifically acknowledge in writing that such evidence was  
85 considered when evaluating the best interests of the child.

86 ~~14.(n)~~ Evidence that either parent has knowingly provided  
87 false information to the court regarding any prior or pending  
88 action regarding domestic violence, sexual violence, child  
89 abuse, child abandonment, or child neglect.

90 ~~15.(o)~~ The demonstrated capacity or disposition of each

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2016250c1

91 parent to perform or ensure the performance of particular  
92 parenting tasks customarily performed by the other ~~each~~ parent  
93 and the division of parental responsibilities before the  
94 institution of litigation and during the pending litigation,  
95 including the extent to which parenting responsibilities were  
96 undertaken by third parties.

97 ~~16.(p)~~ The demonstrated capacity and disposition of each  
98 parent to participate and be involved in the child's school and  
99 extracurricular activities.

100 ~~17.(q)~~ The demonstrated capacity and disposition of each  
101 parent to maintain an environment for the child which is free  
102 from substance abuse.

103 ~~18.(r)~~ The capacity and disposition of each parent to  
104 protect the child from the ongoing litigation as demonstrated by  
105 not discussing the litigation with the child, not sharing  
106 documents or electronic media related to the litigation with the  
107 child, and refraining from disparaging comments about the other  
108 parent to the child.

109 ~~19.(s)~~ The developmental stages and needs of the child and  
110 the demonstrated capacity and disposition of each parent to meet  
111 the child's developmental needs.

112 20. The amount of time-sharing requested by each parent.

113 21. The frequency that a parent would likely leave the  
114 child in the care of a nonrelative on evenings and weekends when  
115 the other parent would be available and willing to provide care.

116 ~~22.(t)~~ Any other factor that is relevant to the  
117 determination of a specific parenting plan, including the time-  
118 sharing schedule.

119 (b) A court order must be supported by written findings of

590-02644-16

2016250c1

120 fact if the order establishes an initial permanent time-sharing  
121 schedule that does not provide for approximately equal time-  
122 sharing.

123 (c) A determination of parental responsibility, a parenting  
124 plan, or a time-sharing schedule may not be modified without a  
125 determination that such modification is in the best interest of  
126 the child and upon a showing of a substantial, material, and  
127 unanticipated change in circumstances.

128 Section 2. This act shall take effect October 1, 2016.

129

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/16

Meeting Date

SB 250

Bill Number (if applicable)

Topic Parenting and Time Sharing

Name Jessica Gordon

Job Title PhD, AEWMP

Address 700 S. Harbor Island Blvd #217

Street

Tampa, FL

City

State

33607

Zip

Phone 813-469-3129

Email jharral920@gmail.com

Speaking:  For  Against  Information

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

Representing Pediatrics of Tampa Bay & Florida Breastfeeding 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)

2-10-16

Meeting Date

SB 250

Bill Number (if applicable)

Topic Parenting & Timesharing

Amendment Barcode (if applicable)

Name Joan Younger Meek, M.D.

Job Title Pediatrician

Address 4013 Conway Place Circle

Phone 407-438-5543

Street

Orlando

City

FL

State

32812

Zip

Email jymkiddoc@aol.com

Speaking:  For  Against  Information

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

Representing Florida Breastfeeding 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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-10-16

Meeting Date

SB 250

Bill Number (if applicable)

Topic SB 250

Amendment Barcode (if applicable)

Name Lisa Meotti

Job Title Graduate student - Univ. of West Florida

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

\_\_\_\_\_ City State Zip

Email lbb4@students.uwf.edu

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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/10/16  
Meeting Date

SB 250  
Bill Number (if applicable)

Topic SB250

Amendment Barcode (if applicable)

Name Staci Jagoe

Job Title Student at University of West Florida

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email saj12@students.uwf.edu

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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/10/16

Meeting Date

SB 250

Bill Number (if applicable)

Topic Parenting + Timesharing

Amendment Barcode (if applicable)

Name Taylor Caragan, MPH

Job Title MCH specialist

Address 8801 Hunter's Lake Dr Apt 1227

Phone 850 303 4760

Street

Tampa

City

FL

State

33647

Zip

Email tcaragan@mail.osf.edu

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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/16

Meeting Date

510 250

Bill Number (if applicable)

Topic PARENTING SB/SC

Amendment Barcode (if applicable)

Name JIM TAYLOR

Job Title PARENT

Address 132 PEYTON CT

Phone 407 718-2780

Street

TALLI FL 32317

City

State

Zip

Email James.Taylor@operation  
BeautifulAmerica.org

Speaking:  For  Against  Information

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

Representing FATHERS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/10/2016  
Meeting Date

SB 250  
Bill Number (if applicable)

Topic Parenting and Time-sharing

Amendment Barcode (if applicable)

Name Cynthia L. Seab

Job Title Graduate Research Assistant, UF

Address 4628 NW 31 Ave  
Street  
GNV, FL 32606  
City State Zip

Phone (352) 301-6392

Email cseab@uf.edu

Speaking:  For  Against  Information

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

Representing FL Breastfeeding 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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/10/16  
Meeting Date

SB 250  
Bill Number (if applicable)

Topic SB 250

Amendment Barcode (if applicable)

Name LISA VARGO

Job Title Student at University of West Florida

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email LT20@students.uwf.edu

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

Tallahassee, Florida 32399-1100

✓  
COMMITTEES:  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Reapportionment  
Rules

JOINT COMMITTEE:  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR TOM LEE**

24th District

February 1, 2016

The Honorable David Simmons  
Senate Committee on Rules, Chair  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Simmons,

I respectfully request that SB 250 related to *Family Law*, be placed on the Senate Committee on Rules agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tom Lee".

Tom Lee  
Senator, District 24

Cc: John Phelps, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: [www.flsenate.gov](http://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.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 582

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Gaetz

**SUBJECT:** Public Corruption

**DATE:** February 9, 2016      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Fav/CS</b>
2.	Cellon	Cannon	CJ	<b>Favorable</b>
3.	Peacock	Phelps	RC	<b>Favorable</b>

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

PLEASE MAKE SELECTION

---

**I. Summary:**

CS/SB 582 amends the laws relating to public corruption. Specifically, the bill:

- Defines “governmental entity” as an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.
- Defines “public contractor” as any person who has entered into a contract with a governmental entity or any officer or employee of a person who has entered into a contract with a governmental entity.
- Changes the mens rea element for certain public corruption crimes from “corruptly” to “knowingly and intentionally.”
- Expands the application of the official misconduct law in s. 838.022, F.S., to public contractors.
- Expands the application of the bid tampering law in s. 838.22, F.S., to public contractors who contract to assist a governmental entity in a competitive procurement.

The bill has an effective date of October 1, 2016.



## II. Present Situation:

### Nineteenth Statewide Grand Jury

A statewide grand jury<sup>1</sup> was impaneled in February 2010 upon the petition of Governor Charlie Crist to the Supreme Court of Florida. In the Petition for Order to Impanel a Statewide Grand Jury, Governor Crist requested that the following should be addressed:<sup>2</sup>

- Examine criminal activity of public officials who have abused their powers via their public office;
- Consider whether Florida’s prosecutors have sufficient resources to effectively combat corruption;
- Address the effectiveness of Florida’s current statutes in fighting public corruption;
- Identify any deficiencies in current laws, punishments or enforcement efforts and make detailed recommendations to improve our anti-corruption initiatives;
- Investigate crimes, return indictments, and make presentations; and
- Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.

The Nineteenth Statewide Grand Jury issued its First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions on December 17, 2010. In its report, the Nineteenth Statewide Grand Jury made several recommendations to the Legislature, including revisions to ch. 838, F.S., regarding the definitions of the terms “public servant” and “corruptly” and “corrupt intent,” and the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and bid tampering.

### Color of Law

Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law” where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. The Nineteenth Statewide Grand Jury also recommended that the Legislature consider reclassification of such offenses.<sup>3</sup>

### Doctrine of Mens Rea and Scienter

The term “mens rea” is defined as “a guilty mind; a guilty or wrongful purpose; a criminal intent.”<sup>4</sup> Black’s Law Dictionary notes that the term scienter is defined as “knowingly” and frequently used to signify the defendant’s guilty knowledge.<sup>5</sup> The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.<sup>6</sup>

---

<sup>1</sup> See ss. 905.31-905.40, F.S., known as the Statewide Grand Jury Act.

<sup>2</sup> Nineteenth Statewide Grand Jury First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions, December 17, 2010, Case No. SC 09-1910. Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) (last visited on November 20, 2015).

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

<sup>4</sup> BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

<sup>5</sup> *Id.* 1512.

<sup>6</sup> *Chicone v. State*, 684 So.2d 736, 741 (Fla. 1996). Also, see *U.S. v. Balint*, 258 U.S. 250 (1922).

The Nineteenth Statewide Grand Jury found that the use of the word “corruptly” or “with corrupt intent” made prosecutions of offenses under ch. 838, F.S., more difficult and might require additional evidence, such as testimony from persons involved.<sup>7</sup> The Nineteenth Statewide Grand Jury recommended that the additional element of “corruptly” or “with corrupt intent” be removed from the ch. 838, F.S., offenses of bribery, unlawful compensation, official misconduct, and bid tampering.<sup>8</sup>

### **Bribery; Misuse of Public Office: Chapter 838, F.S.**

Chapter 838, F.S., pertains to bribery and other offenses concerning the misuse of public office.

Section 838.014(4), F.S., defines the term “corruptly” or “with corrupt intent” as acting knowingly and dishonestly for a wrongful purpose.

Section 838.014(6), F.S., defines the term “public servant” as:

- (a) Any officer or employee of a state, county, municipal, or special district agency or entity;
- (b) Any legislative or judicial officer or employee;
- (c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- (d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

### **Bribery**

Section 838.015, F.S., relates to the offense of bribery.<sup>9</sup> Any individual who violates this section is guilty of a felony of the second degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.<sup>10</sup>

Chapter 838, F.S., also contains three other bribery offenses, including bribery in athletic contests,<sup>11</sup> commercial bribery receiving,<sup>12</sup> and commercial bribery.<sup>13</sup> In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was

<sup>7</sup> See *supra* note 2, at 24.

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

<sup>9</sup> Section 838.015(1), F.S., defines “bribery” as corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

<sup>10</sup> Section 838.015(3), F.S. Under sections 775.082 and 775.083, F.S., a second degree felony is punishable by a term of imprisonment not to exceed 15 years, and a maximum fine of \$10,000. Section 775.084, F.S., relates to habitual felony offenders. If a habitual felony offender is convicted of a second degree felony, such offender may be sentenced for a term not exceeding 30 years.

<sup>11</sup> Section 838.12, F.S.

<sup>12</sup> Section 838.15, F.S.

<sup>13</sup> Section 838.16, F.S.

invalid.<sup>14</sup> The Nineteenth Statewide Grand Jury Report opined that s. 838.16, F.S., commercial bribery, was probably unconstitutionally vague since s. 838.16, F.S., referred to s. 838.15, F.S.<sup>15</sup>

### **Unlawful Compensation or Reward for Official Behavior**

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony<sup>16</sup> for any person corruptly to give, offer, or promise to any public servant any benefit not authorized by law; or for any public servant corruptly to request, solicit, accept or agree to accept any benefit not authorized by law:

- For the past, present, or future performance, nonperformance or violation of
- Any act or omission; or
- For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission

which the person believes to have been or the public servant represents to have been either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.<sup>17</sup>

### **Official Misconduct**

The offense of official misconduct contained in s. 838.022(1), F.S., provides that it “is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another to:

- (a) Falsify, or cause another person to falsify, any official record or official document;
- (b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- (c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

Any person who violates this section commits a felony of the third degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.<sup>18</sup>

### **Bid Tampering**

Section 838.22, F.S., provides that:

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<sup>14</sup> *Roque v. State*, 664 So.2d 928 (Fla. 1995). The Court further noted that s. 838.015, F.S., was impermissibly vague and subject to arbitrary application. *Id.* at 929.

<sup>15</sup> *See supra* note 2, at 34.

<sup>16</sup> Section 838.016(4), F.S. Any person who violates this section commits a second degree felony which is punishable as provided in ss. 775.082, 775.083, or s. 775.084, F.S. *See supra* note 10.

<sup>17</sup> Section 838.016(1) and (2), F.S.

<sup>18</sup> Section 838.022(3), F.S. Under sections 775.082 and 775.083, F.S., a third degree felony is punishable by a term of imprisonment not to exceed 5 years, and a maximum fine of \$5,000. Section 775.084, F.S., relates to habitual felony offenders. If a habitual felony offender is convicted of a third degree felony, such offender may be sentenced for a term not exceeding 10 years.

(1) It is unlawful for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:

(a) Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.

(b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

(2) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.

(3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).

(4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of subsection (1) or subsection (2).

(5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084<sup>19</sup>

### **Criminal Use of Personal Identification Information**

Section 817.568(11), F.S., provides, in part, that any person who willfully and without authorization fraudulently uses personal identification concerning a public servant as defined in s. 838.014, F.S., without first obtaining the consent of that individual commits a felony of the second degree.

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

**Section 1** amends s. 838.014, F.S., to define the term “governmental entity” as an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law. The bill expands the definition of “governmental entity” to include other public entities, such as Citizens Property Insurance Corporation,<sup>20</sup> statutorily-created direct support organizations,<sup>21</sup> and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

This section defines the term “public contractor,” for purposes of the offenses of official misconduct in s. 838.022, F.S., and bid tampering in s. 838.22, F.S., as any person, as defined by s. 1.01(3), F.S.,<sup>22</sup> who has entered into a contract with a governmental entity or any officer or employee of a person, as defined in s. 1.01(3), F.S., who has entered into a contract with a governmental entity.

<sup>19</sup> See *supra* note 3.

<sup>20</sup> Section 627.351(6), F.S. Citizens Property Insurance Corporation was created in 2002 as a not-for-profit insurer of last resort for home-owners who could not obtain insurance elsewhere.

<sup>21</sup> A direct support organization is an organization incorporated under ch. 617, F.S., and approved by the Department of State as a Florida corporation not for profit that is approved by a state agency to operate for the benefit of a specific program, such as the Florida Historic Capitol Museum Council’s direct support organization. See s. 272.131(1)(e), F.S.

<sup>22</sup> Section 1.01(3), F.S., provides that the term “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

This section revises the definition of the term “public servant” to mean any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee and a candidate for election or appointment to any of the officer positions listed in this subsection.

**Section 2** amends s. 838.015(1), F.S., relating to bribery, to change the mens rea element of the crime from “corruptly” to “knowingly and intentionally.”

**Section 3** amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior, to redefine the mens rea element of the offense from “corruptly” to “knowingly and intentionally.”

**Section 4** amends s. 838.022, F.S., to subject public contractors to the same level of conduct as public servants. The mens rea element of the offense is changed from “with corrupt intent” to “knowingly and intentionally.” The law is clarified so that the harm caused to another must be an “unlawful harm.” Concealing, covering up, destroying, mutilating, or altering an official record is criminalized unless such action is authorized by law or contract.

**Section 5** amends s. 838.22, F.S., to expand the application of the bid tampering laws to public contractors who have contracted with a governmental entity to assist in a competitive procurement. These public contractors are treated similar to public servants for this law. The mens rea element of the offense is changed from “with corrupt intent” to “knowingly and intentionally” influence.

**Sections 6 through 10** reenact ss. 112.534(2)(a), 117.01(4)(d), 817.568(11), 921.0022(3)(g), and 921.0022(3)(d), F.S., respectively, to incorporate by reference the revisions made in sections 1 through 5 of the bill.

**Section 11** provides that the bill takes effect on October 1, 2016.

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

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Indeterminate. In response to request for proposals and solicitation of competitive bids for state services and construction projects, a vendor may increase its bid amounts to account for the potential legal expenses that may result from a violation of public corruption laws.

**C. Government Sector Impact:**

Indeterminate. To the extent the mens rea element of these crimes relating to misuse of public office has become easier to prove, more public servants may be convicted of such crimes.

Also, costs for services provided by public contractors may increase to the extent public contractors factor into their bids the risk of incurring legal expenses associated with being accused of violating public corruption laws.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 838.014, 838.015, 838.016, 838.022, and 838.22.

The bill makes technical changes to the following sections of the Florida Statutes: 112.534(2)(a), 117.01(4)(d), 817.568(11), 921.0022(3)(g), and 921.0022(3)(d).

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on January 19, 2016:**

- Revises the definition of “governmental entity;”
- Creates a definition of “public contractor;”
- Deletes the provisions of the original bill regarding a nongovernmental entity acting on behalf of a governmental entity;

- Provides that public contractors are subject to the offenses of official misconduct and bid tampering in ss. 838.022 and 838.22, F.S.;
- Deletes the term “improper” in the offenses of official misconduct and bid tampering;
- Provides an exception, as authorized by law or contract, for concealing, covering up, destroying, mutilating, or altering any official record or document in the official misconduct offense; and
- Expands the offense of bid tampering to prohibit the disclosure of material information in the competitive solicitation process, including a vendor’s response and evaluation results, and provides an exception for disclosing such information when otherwise authorized by law.

B. Amendments:

None.

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

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A bill to be entitled

An act relating to public corruption; amending s. 838.014, F.S.; revising and providing definitions; amending s. 838.015, F.S.; revising the definition of the term "bribery"; revising requirements for prosecution; amending s. 838.016, F.S.; revising the prohibition against unlawful compensation or reward for official behavior to conform to changes made by the act; amending s. 838.022, F.S.; revising the prohibition against official misconduct to conform to changes made by the act; revising applicability of the offense to include public contractors; amending s. 838.22, F.S.; revising the prohibition against bid tampering to conform to changes made by the act; revising applicability of the offense to include specified public contractors; reenacting s. 112.534(2)(a), F.S., relating to official misconduct, and s. 117.01(4)(d), F.S., relating to appointment, application, suspension, revocation, application fee, bond, and oath of notaries public, to incorporate the amendment made by the act to s. 838.022, F.S., in references thereto; reenacting s. 817.568(11), F.S., relating to criminal use of personal identification information, to incorporate the amendment made by the act to s. 838.014, F.S., in a reference thereto; reenacting s. 921.0022(3)(d) and (g), F.S., relating to the Criminal Punishment Code offense severity ranking chart, to incorporate the amendments made by the act to ss. 838.015, 838.016, 838.022, and 838.22, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (7) of section 838.014, Florida Statutes, is renumbered as subsection (8), present subsections (4) and (6) are amended, and a new subsection (6) is added to that section, to read:

838.014 Definitions.—As used in this chapter, the term:

(4) "Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law ~~"Corruptly" or "with corrupt intent"~~ means acting knowingly and dishonestly for a wrongful purpose.

(6) "Public contractor" means, for purposes of ss. 838.022 and 838.22 only:

(a) Any person, as defined in s. 1.01(3), who has entered into a contract with a governmental entity; or

(b) Any officer or employee of a person, as defined in s. 1.01(3), who has entered into a contract with a governmental entity.

~~(7)~~(6) "Public servant" means:

(a) Any officer or employee of a governmental state, ~~county, municipal, or special district agency or entity,~~ including

~~(b)~~ any executive, legislative, or judicial branch officer or employee;

~~(b)~~~~(c)~~ Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a

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61 governmental function; or

62 ~~(c)(4)~~ A candidate for election or appointment to any of  
63 the officer positions listed in this subsection, or an  
64 individual who has been elected to, but has yet to officially  
65 assume the responsibilities of, public office.

66 Section 2. Subsection (1) of section 838.015, Florida  
67 Statutes, is amended to read:

68 838.015 Bribery.—

69 (1) "Bribery" means ~~corruptly~~ to knowingly and  
70 intentionally give, offer, or promise to any public servant, or,  
71 if a public servant, ~~corruptly~~ to knowingly and intentionally  
72 request, solicit, accept, or agree to accept for himself or  
73 herself or another, any pecuniary or other benefit not  
74 authorized by law with an intent or purpose to influence the  
75 performance of any act or omission which the person believes to  
76 be, or the public servant represents as being, within the  
77 official discretion of a public servant, in violation of a  
78 public duty, or in performance of a public duty.

79 Section 3. Subsections (1) and (2) of section 838.016,  
80 Florida Statutes, are amended to read:

81 838.016 Unlawful compensation or reward for official  
82 behavior.—

83 (1) It is unlawful for any person ~~corruptly~~ to knowingly  
84 and intentionally give, offer, or promise to any public servant,  
85 or, if a public servant, ~~corruptly~~ to knowingly and  
86 intentionally request, solicit, accept, or agree to accept, any  
87 pecuniary or other benefit not authorized by law, for the past,  
88 present, or future performance, nonperformance, or violation of  
89 any act or omission which the person believes to have been, or

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90 the public servant represents as having been, either within the  
91 official discretion of the public servant, in violation of a  
92 public duty, or in performance of a public duty. This section  
93 ~~does not~~ ~~Nothing herein shall be construed to~~ preclude a public  
94 servant from accepting rewards for services performed in  
95 apprehending any criminal.

96 (2) It is unlawful for any person ~~corruptly~~ to knowingly  
97 and intentionally give, offer, or promise to any public servant,  
98 or, if a public servant, ~~corruptly~~ to knowingly and  
99 intentionally request, solicit, accept, or agree to accept, any  
100 pecuniary or other benefit not authorized by law for the past,  
101 present, or future exertion of any influence upon or with any  
102 other public servant regarding any act or omission which the  
103 person believes to have been, or which is represented to him or  
104 her as having been, either within the official discretion of the  
105 other public servant, in violation of a public duty, or in  
106 performance of a public duty.

107 Section 4. Subsection (1) of section 838.022, Florida  
108 Statutes, is amended, and subsection (2) of that section is  
109 republished, to read:

110 838.022 Official misconduct.—

111 (1) It is unlawful for a public servant or public  
112 contractor, ~~with corrupt intent~~ to knowingly and intentionally  
113 obtain a benefit for any person or to cause unlawful harm to  
114 another, ~~by~~ te:

115 (a) Falsifying ~~Falsify~~, or causing ~~cause~~ another person to  
116 falsify, any official record or official document;

117 (b) Concealing, covering up, destroying, mutilating, or  
118 altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any

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119 official record or official document, except as authorized by  
 120 law or contract, or causing ~~cause~~ another person to perform such  
 121 an act; or

122 (c) Obstructing, delaying, or preventing ~~Obstruct, delay,~~  
 123 ~~or prevent~~ the communication of information relating to the  
 124 commission of a felony that directly involves or affects the  
 125 government public agency or public entity served by the public  
 126 servant or public contractor.

127 (2) For the purposes of this section:

128 (a) The term "public servant" does not include a candidate  
 129 who does not otherwise qualify as a public servant.

130 (b) An official record or official document includes only  
 131 public records.

132 Section 5. Section 838.22, Florida Statutes, is amended to  
 133 read:

134 838.22 Bid tampering.—

135 (1) It is unlawful for a public servant or a public  
 136 contractor who has contracted with a governmental entity to  
 137 assist in a competitive procurement, with corrupt intent to  
 138 knowingly and intentionally influence or attempt to influence  
 139 the competitive solicitation bidding process undertaken by any  
 140 governmental state, county, municipal, or special district  
 141 agency, or any other public entity, for the procurement of  
 142 commodities or services, by ~~to~~:

143 (a) Disclosing, except as authorized by law, Disclose  
 144 material information concerning a vendor's response, any  
 145 evaluation results, bid or other aspects of the competitive  
 146 solicitation bidding process when such information is not  
 147 publicly disclosed.

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148 (b) Altering or amending ~~Alter or amend~~ a submitted  
 149 response bid, documents or other materials supporting a  
 150 submitted response bid, or any evaluation bid results relating  
 151 to the competitive solicitation for the purpose of intentionally  
 152 providing a competitive advantage to any person who submits a  
 153 response bid.

154 (2) It is unlawful for a public servant or a public  
 155 contractor who has contracted with a governmental entity to  
 156 assist in a competitive procurement, with corrupt intent to  
 157 knowingly and intentionally obtain a benefit for any person or  
 158 to cause unlawful harm to another by circumventing, to  
 159 circumvent a competitive solicitation bidding process required  
 160 by law or rule through the use of ~~by using~~ a sole-source  
 161 contract for commodities or services.

162 (3) It is unlawful for any person to knowingly agree,  
 163 conspire, combine, or confederate, directly or indirectly, with  
 164 a public servant or a public contractor who has contracted with  
 165 a governmental entity to assist in a competitive procurement to  
 166 violate subsection (1) or subsection (2).

167 (4) It is unlawful for any person to knowingly enter into a  
 168 contract for commodities or services which was secured by a  
 169 public servant or a public contractor who has contracted with a  
 170 governmental entity to assist in a competitive procurement  
 171 acting in violation of subsection (1) or subsection (2).

172 (5) Any person who violates this section commits a felony  
 173 of the second degree, punishable as provided in s. 775.082, s.  
 174 775.083, or s. 775.084.

175 Section 6. For the purpose of incorporating the amendment  
 176 made by this act to section 838.022, Florida Statutes, in a

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177 reference thereto, paragraph (a) of subsection (2) of section  
 178 112.534, Florida Statutes, is reenacted to read:

179 112.534 Failure to comply; official misconduct.-  
 180 (2) (a) All the provisions of s. 838.022 shall apply to this  
 181 part.

182 Section 7. For the purpose of incorporating the amendment  
 183 made by this act to section 838.022, Florida Statutes, in a  
 184 reference thereto, paragraph (d) of subsection (4) of section  
 185 117.01, Florida Statutes, is reenacted to read:

186 117.01 Appointment, application, suspension, revocation,  
 187 application fee, bond, and oath.-

188 (4) The Governor may suspend a notary public for any of the  
 189 grounds provided in s. 7, Art. IV of the State Constitution.  
 190 Grounds constituting malfeasance, misfeasance, or neglect of  
 191 duty include, but are not limited to, the following:

192 (d) Official misconduct as defined in s. 838.022.

193 Section 8. For the purpose of incorporating the amendment  
 194 made by this act to section 838.014, Florida Statutes, in a  
 195 reference thereto, subsection (11) of section 817.568, Florida  
 196 Statutes, is reenacted to read:

197 817.568 Criminal use of personal identification  
 198 information.-

199 (11) A person who willfully and without authorization  
 200 fraudulently uses personal identification information concerning  
 201 an individual who is 60 years of age or older; a disabled adult  
 202 as defined in s. 825.101; a public servant as defined in s.  
 203 838.014; a veteran as defined in s. 1.01; a first responder as  
 204 defined in s. 125.01045; an individual who is employed by the  
 205 State of Florida; or an individual who is employed by the

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206 Federal Government without first obtaining the consent of that  
 207 individual commits a felony of the second degree, punishable as  
 208 provided in s. 775.082, s. 775.083, or s. 775.084.

209 Section 9. For the purpose of incorporating the amendments  
 210 made by this act to sections 838.015, 838.016, and 838.22,  
 211 Florida Statutes, in references thereto, paragraph (g) of  
 212 subsection (3) of section 921.0022, Florida Statutes, is  
 213 reenacted to read:

214 921.0022 Criminal Punishment Code; offense severity ranking  
 215 chart.-

216 (3) OFFENSE SEVERITY RANKING CHART

217 (g) LEVEL 7

218	Florida	Felony	Description
219	Statute	Degree	
220	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
221	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
222	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer

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223 who is in a patrol vehicle with  
siren and lights activated.

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

224 402.319(2) 2nd Misrepresentation and  
negligence or intentional act  
resulting in great bodily harm,  
permanent disfiguration,  
225 permanent disability, or death.

409.920 3rd Medicaid provider fraud;  
226 (2)(b)1.a. \$10,000 or less.

409.920 2nd Medicaid provider fraud; more  
227 (2)(b)1.b. than \$10,000, but less than  
\$50,000.

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

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

458.327(1) 3rd Practicing medicine without a  
license.

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230 459.013(1) 3rd Practicing osteopathic medicine  
without a license.

231 460.411(1) 3rd Practicing chiropractic  
medicine without a license.

232 461.012(1) 3rd Practicing podiatric medicine  
without a license.

233 462.17 3rd Practicing naturopathy without  
a license.

234 463.015(1) 3rd Practicing optometry without a  
license.

235 464.016(1) 3rd Practicing nursing without a  
license.

236 465.015(2) 3rd Practicing pharmacy without a  
license.

237 466.026(1) 3rd Practicing dentistry or dental  
hygiene without a license.

238 467.201 3rd Practicing midwifery without a  
license.

239 468.366 3rd Delivering respiratory care

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				services without a license.
240	483.828(1)	3rd		Practicing as clinical laboratory personnel without a license.
241	483.901(9)	3rd		Practicing medical physics without a license.
242	484.013(1)(c)	3rd		Preparing or dispensing optical devices without a prescription.
243	484.053	3rd		Dispensing hearing aids without a license.
244	494.0018(2)	1st		Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
245	560.123(8)(b)1.	3rd		Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
246	560.125(5)(a)	3rd		Money services business by unauthorized person, currency

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				or payment instruments exceeding \$300 but less than \$20,000.
247	655.50(10)(b)1.	3rd		Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
248	775.21(10)(a)	3rd		Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
249	775.21(10)(b)	3rd		Sexual predator working where children regularly congregate.
250	775.21(10)(g)	3rd		Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
251	782.051(3)	2nd		Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
252				

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253	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
254	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
255	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
256	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
257	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
258	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
259	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

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260	784.048(7)	3rd	Aggravated stalking; violation of court order.
261	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
262	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
263	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
264	784.081(1)	1st	Aggravated battery on specified official or employee.
265	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
266	784.083(1)	1st	Aggravated battery on code inspector.
267	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services

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by the transfer or transport of  
an adult from outside Florida  
to within the state.

268

790.07(4) 1st Specified weapons violation  
subsequent to previous  
conviction of s. 790.07(1) or  
(2).

269

790.16(1) 1st Discharge of a machine gun  
under specified circumstances.

270

790.165(2) 2nd Manufacture, sell, possess, or  
deliver hoax bomb.

271

790.165(3) 2nd Possessing, displaying, or  
threatening to use any hoax  
bomb while committing or  
attempting to commit a felony.

272

790.166(3) 2nd Possessing, selling, using, or  
attempting to use a hoax weapon  
of mass destruction.

273

790.166(4) 2nd Possessing, displaying, or  
threatening to use a hoax  
weapon of mass destruction  
while committing or attempting  
to commit a felony.

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274 790.23 1st,PBL Possession of a firearm by a  
person who qualifies for the  
penalty enhancements provided  
for in s. 874.04.

275

794.08(4) 3rd Female genital mutilation;  
consent by a parent, guardian,  
or a person in custodial  
authority to a victim younger  
than 18 years of age.

276

796.05(1) 1st Live on earnings of a  
prostitute; 2nd offense.

277

796.05(1) 1st Live on earnings of a  
prostitute; 3rd and subsequent  
offense.

278

800.04(5)(c)1. 2nd Lewd or lascivious molestation;  
victim younger than 12 years of  
age; offender younger than 18  
years of age.

279

800.04(5)(c)2. 2nd Lewd or lascivious molestation;  
victim 12 years of age or older  
but younger than 16 years of  
age; offender 18 years of age  
or older.

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280 800.04(5)(e) 1st Lewd or lascivious molestation;  
victim 12 years of age or older  
but younger than 16 years;  
offender 18 years or older;  
prior conviction for specified  
sex offense.

281 806.01(2) 2nd Maliciously damage structure by  
fire or explosive.

282 810.02(3)(a) 2nd Burglary of occupied dwelling;  
unarmed; no assault or battery.

283 810.02(3)(b) 2nd Burglary of unoccupied  
dwelling; unarmed; no assault  
or battery.

284 810.02(3)(d) 2nd Burglary of occupied  
conveyance; unarmed; no assault  
or battery.

285 810.02(3)(e) 2nd Burglary of authorized  
emergency vehicle.

286 812.014(2)(a)1. 1st Property stolen, valued at  
\$100,000 or more or a  
semitrailer deployed by a law  
enforcement officer; property

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287 stolen while causing other  
property damage; 1st degree  
grand theft.

812.014(2)(b)2. 2nd Property stolen, cargo valued  
at less than \$50,000, grand  
theft in 2nd degree.

288 812.014(2)(b)3. 2nd Property stolen, emergency  
medical equipment; 2nd degree  
grand theft.

289 812.014(2)(b)4. 2nd Property stolen, law  
enforcement equipment from  
authorized emergency vehicle.

290 812.0145(2)(a) 1st Theft from person 65 years of  
age or older; \$50,000 or more.

291 812.019(2) 1st Stolen property; initiates,  
organizes, plans, etc., the  
theft of property and traffics  
in stolen property.

292 812.131(2)(a) 2nd Robbery by sudden snatching.

293 812.133(2)(b) 1st Carjacking; no firearm, deadly  
weapon, or other weapon.

294



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295	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
296	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
297	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
298	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
299	817.2341(2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
300	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

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301	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
302	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
303	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
304	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
305	838.015	2nd	Bribery.
306	838.016	2nd	Unlawful compensation or reward for official behavior.
307	838.021(3)(a)	2nd	Unlawful harm to a public servant.
308	838.22	2nd	Bid tampering.
309	843.0855(2)	3rd	Impersonation of a public

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310 officer or employee.

311 843.0855(3) 3rd Unlawful simulation of legal process.

312 843.0855(4) 3rd Intimidation of a public officer or employee.

313 847.0135(3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.

314 847.0135(4) 2nd Traveling to meet a minor to commit an unlawful sex act.

315 872.06 2nd Abuse of a dead human body.

316 874.05(2)(b) 1st Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

317 874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine (or other drug

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prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

318 893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

319 893.13(4)(a) 1st Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

320 893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

321 893.135(1)(b)1.a. 1st Trafficking in cocaine, more

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			than 28 grams, less than 200 grams.
322	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
323	893.135(1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
324	893.135(1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
325	893.135(1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
326	893.135(1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
327	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
328	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than

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			5 kilograms.
329	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
330	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
331	893.135(1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
332	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
333	893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
334	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
335	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but

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 less than \$20,000.

336 896.104(4)(a)1. 3rd Structuring transactions to  
 evade reporting or registration  
 requirements, financial  
 transactions exceeding \$300 but  
 less than \$20,000.

337 943.0435(4)(c) 2nd Sexual offender vacating  
 permanent residence; failure to  
 comply with reporting  
 requirements.

338 943.0435(8) 2nd Sexual offender; remains in  
 state after indicating intent  
 to leave; failure to comply  
 with reporting requirements.

339 943.0435(9)(a) 3rd Sexual offender; failure to  
 comply with reporting  
 requirements.

340 943.0435(13) 3rd Failure to report or providing  
 false information about a  
 sexual offender; harbor or  
 conceal a sexual offender.

341 943.0435(14) 3rd Sexual offender; failure to  
 report and reregister; failure

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 to respond to address  
 verification; providing false  
 registration information.

342 944.607(9) 3rd Sexual offender; failure to  
 comply with reporting  
 requirements.

343 944.607(10)(a) 3rd Sexual offender; failure to  
 submit to the taking of a  
 digitized photograph.

344 944.607(12) 3rd Failure to report or providing  
 false information about a  
 sexual offender; harbor or  
 conceal a sexual offender.

345 944.607(13) 3rd Sexual offender; failure to  
 report and reregister; failure  
 to respond to address  
 verification; providing false  
 registration information.

346 985.4815(10) 3rd Sexual offender; failure to  
 submit to the taking of a  
 digitized photograph.

347 985.4815(12) 3rd Failure to report or providing  
 false information about a

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348

sexual offender; harbor or  
conceal a sexual offender.

985.4815 (13) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification; providing false  
registration information.

349

Section 10. For the purpose of incorporating the amendment  
made by this act to section 838.022, Florida Statutes, in a  
reference thereto, paragraph (d) of subsection (3) of section  
921.0022, Florida Statutes, is reenacted to read:

354

921.0022 Criminal Punishment Code; offense severity ranking  
chart.—

356

(3) OFFENSE SEVERITY RANKING CHART

357

(d) LEVEL 4

358

359

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

360

316.1935 (3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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361

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362

499.0051 (1) 3rd Failure to maintain or deliver  
pedigree papers.

363

499.0051 (2) 3rd Failure to authenticate  
pedigree papers.

364

499.0051 (6) 2nd Knowing sale or delivery, or  
possession with intent to sell,  
contraband prescription drugs.

365

517.07 (1) 3rd Failure to register securities.

366

517.12 (1) 3rd Failure of dealer, associated  
person, or issuer of securities  
to register.

367

784.07 (2) (b) 3rd Battery of law enforcement  
officer, firefighter, etc.

368

784.074 (1) (c) 3rd Battery of sexually violent  
predators facility staff.

369

784.075 3rd Battery on detention or  
commitment facility staff.

370

784.078 3rd Battery of facility employee by  
throwing, tossing, or expelling  
certain fluids or materials.

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	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
371			
	784.081(3)	3rd	Battery on specified official or employee.
372			
	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
373			
	784.083(3)	3rd	Battery on code inspector.
374			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
375			
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
376			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
377			
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering

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			to designated person.
378			
	787.07	3rd	Human smuggling.
379			
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
380			
	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
381			
	790.115(2)(c)	3rd	Possessing firearm on school property.
382			
	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
383			
	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
384			
	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
385			
	810.06	3rd	Burglary; possession of tools.

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386 810.08(2)(c) 3rd Trespass on property, armed  
with firearm or dangerous  
weapon.

387 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000  
or more but less than \$20,000.

388 812.014(2)(c)4.- 3rd Grand theft, 3rd degree, a  
10. will, firearm, motor vehicle,  
livestock, etc.

389 812.0195(2) 3rd Dealing in stolen property by  
use of the Internet; property  
stolen \$300 or more.

390 817.563(1) 3rd Sell or deliver substance other  
than controlled substance  
agreed upon, excluding s.  
893.03(5) drugs.

391 817.568(2)(a) 3rd Fraudulent use of personal  
identification information.

392 817.625(2)(a) 3rd Fraudulent use of scanning  
device or reencoder.

393 828.125(1) 2nd Kill, maim, or cause great  
bodily harm or permanent

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breeding disability to any  
registered horse or cattle.

394 837.02(1) 3rd Perjury in official  
proceedings.

395 837.021(1) 3rd Make contradictory statements  
in official proceedings.

396 838.022 3rd Official misconduct.

397 839.13(2)(a) 3rd Falsifying records of an  
individual in the care and  
custody of a state agency.

398 839.13(2)(c) 3rd Falsifying records of the  
Department of Children and  
Families.

399 843.021 3rd Possession of a concealed  
handcuff key by a person in  
custody.

400 843.025 3rd Deprive law enforcement,  
correctional, or correctional  
probation officer of means of  
protection or communication.

401 843.15(1)(a) 3rd Failure to appear while on bail

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			for felony (bond estreature or bond jumping).
402	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
403	874.05(1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
404	893.13(2) (a)1.	2nd	Purchase of cocaine (or other s. 893.03(1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c)4. drugs).
405	914.14(2)	3rd	Witnesses accepting bribes.
406	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
407	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
408	918.12	3rd	Tampering with jurors.
409	934.215	3rd	Use of two-way communications device to facilitate commission

	585-02305-16		2016582c1
			of a crime.
410			
411			Section 11. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/16

Meeting Date

CS/58582

Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney

Address 2725 Judge Fran Jamieson

Phone (321) 637-5525

Street

City

Viera

State

Zip

Fl.

32940

Email

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

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

Representing FPAA - Fla. Prosecuting Attorneys Assoc.

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-10-16

Meeting Date

CS/SB 582

Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name JAN RUBINO

Job Title 726 Ingleside Ave.

Address Jalapa, Fla. 32303

Phone (850) 224-9262

City

State

Zip

Email rubinojan@yahoo.com

Speaking:  For  Against  Information

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

Representing Florida League of Women Voters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/16  
Meeting Date

582  
Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name Ben Wilcox

Job Title

Address 1719 Old Fort Dr  
Street

Phone

Tall. FL 32301  
City State Zip

Email

Speaking:  For  Against  Information

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

Representing Common Cause 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SM 798

INTRODUCER: Senator Soto

SUBJECT: Promotion of Economic Recovery in Puerto Rico

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Aldana</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Aldana</u>	<u>Phelps</u>	<u>RC</u>	<b>Unfavorable</b>

---

## I. Summary:

SM 798 urges Congress to enact legislation to promote economic recovery in the Commonwealth of Puerto Rico, including:

- Allowing Puerto Rico to use the provisions of Chapter 9 of the United States Bankruptcy Code;
- Discontinuing the proposed 11 percent reduction in Puerto Rico's Medicare Advantage program; and
- Establishing economic development programs to promote increased manufacturing, trade, and employment in Puerto Rico.

Legislative memorials are not subject to the Governor's veto power, and are not presented to the Governor for review. Memorials have no force of law, as they are formal petitions to the federal government that generally request the Congress to act on a particular subject.

## II. Present Situation:

### A History of Puerto Rico under American Administration

Since the conclusion of the Spanish-American War in 1898, the island of Puerto Rico has been part of the United States.<sup>1</sup> While the island was initially placed under military jurisdiction, Congress quickly passed the Foraker Act, providing a civilian government for the territory, a non-voting Resident Commissioner in Congress, and applying all federal laws to the island.<sup>2</sup>

The Jones-Shafroth Act of 1917 (Jones Act) made significant changes in both the organization of the government of Puerto Rico and the relationship of the island with the United States. The act

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<sup>1</sup> Treaty of Peace between the United States and Spain (Treaty of Paris), Dec. 10, 1898, available at [http://avalon.law.yale.edu/19th\\_century/sp1898.asp](http://avalon.law.yale.edu/19th_century/sp1898.asp).

<sup>2</sup> Liberty of Congress, *Foraker Act (Organic Act of 1900)*, <https://www.loc.gov/rr/hispanic/1898/foraker.html> (last visited Dec. 30, 2015).

established a bill of rights for the territory,<sup>3</sup> created a bicameral legislature,<sup>4</sup> and made the Resident Commissioner an elected position.<sup>5</sup>

The Jones Act granted United States citizenship to all residents of the island.<sup>6</sup> The Jones Act also provided that bonds issued by the government of Puerto Rico or under its authority are exempt from federal, state, and local taxation, regardless of the location of the bondholder.<sup>7</sup> This provision makes Puerto Rican municipal debts particularly attractive to bondholders, since municipal bonds generally are only exempt from taxation when held by residents of the issuing state.<sup>8</sup>

The passage of the Puerto Rico Federal Relations Act of 1950 paved the way for modern self-government in Puerto Rico.<sup>9</sup> The act authorized the Legislature of Puerto Rico to call for a referendum to establish a constitutional convention.<sup>10</sup> The new constitution drafted by the convention was approved by voters on March 3, 1952,<sup>11</sup> approved by Congress on July 3, 1952,<sup>12</sup> and was officially proclaimed on July 25, 1952.<sup>13</sup>

## Current Situation

### *Section 936, Federal Tax Credit for Manufacturing*

Puerto Rico is in the midst of a severe economic downturn and its government is unable to meet certain debt obligations as they become due. The island has been in continuous recession since 2006.<sup>14</sup> The beginning of the recession is often linked to the expiration of section 936 tax credit of the Internal Revenue Code,<sup>15</sup> a federal tax credit for manufacturing.<sup>16</sup> Section 936 provided a federal tax credit for income earned in Puerto Rico for firms making at least 80 percent of their income from sources within the territory with at least 75 percent of their total income being derived from an active trade or business within the Commonwealth.<sup>17</sup>

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<sup>3</sup> Jones-Shafroth Act, Pub. L. No. 64-368, s. 2, 39 Stat. 951 (Mar. 2, 1917).

<sup>4</sup> Jones-Shafroth Act, s. 25.

<sup>5</sup> Jones-Shafroth Act, s. 29. The Resident Commissioner had previously been appointed by the President of the United States.

<sup>6</sup> Jones-Shafroth Act, s. 5.

<sup>7</sup> Jones-Shafroth Act, s. 3.

<sup>8</sup> See *The Bonds that Broke Puerto Rico*, N.Y. Times (June 30, 2015),

<http://www.nytimes.com/2015/07/01/business/dealbook/the-bonds-that-broke-puerto-rico.html> (last visited Dec. 30, 2015).

<sup>9</sup> Puerto Rico Federal Relations Act of 1950, Pub. L. No. 81-600 (July 3, 1950).

<sup>10</sup> Puerto Rico Federal Relations Act of 1950, s. 2.

<sup>11</sup> Dieter Nohlen, *Elections in the Americas A Data Handbook Volume 1: North America, Central America, and the Caribbean* 556 (Oxford University Press 2005).

<sup>12</sup> Pub. L. No. 82-447 (July 3, 1952).

<sup>13</sup> PBS, Puerto Rico: A Timeline, <http://www.pbs.org/wgbh/masterpiece/americancollection/woman/timeline.html> (last visited Dec. 30, 2015).

<sup>14</sup> *Puerto Pobre*, The Economist (Oct. 26, 2013), <http://www.economist.com/news/finance-and-economics/21588364-heavily-indebted-island-weighs-americas-municipal-bond-market-puerto-pobre> (last visited Dec. 30, 2015).

<sup>15</sup> 28 U.S.C. s. 936; see Internal Revenue Manual, Part 4: Examining Process, Ch. 61: International Program Audit Guidelines, S. 9: Possession Corporations, available at [https://www.irs.gov/irm/part4/irm\\_04-061-009.html](https://www.irs.gov/irm/part4/irm_04-061-009.html) (last visited Jan. 4, 2016) (phase out rules for Section 936 credit).

<sup>16</sup> *Puerto Pobre*, *supra* note 14.

<sup>17</sup> General Accounting Office, *Puerto Rico and the Section 936 Tax Credit* (June 1993) at 2, <http://www.gao.gov/assets/220/218131.pdf> (last visited Dec. 30, 2015).

Section 936 was credited with encouraging major pharmaceutical firms like Pfizer to establish operations on the island.<sup>18</sup> The phase out of the provision, however, slowed the growth of new firms in Puerto Rico, harming the island's economy.<sup>19</sup> Some studies suggest the benefits of section 936 to the Puerto Rican economy were overstated, with benefits largely flowing to firms who employed few workers on the island.<sup>20</sup>

The recession has had a significant impact on the island's population. The number of residents leaving the island has been steadily increasing for the last decade, from approximately 10,000 per year in 2005 and 26,000 per year in 2010 to more than 64,000 in 2014.<sup>21</sup> Much of this migration has been to Florida, with the state's population of people of Puerto Rican heritage increasing from 816,002 in 2009 to 1,006,542 in 2014.<sup>22</sup>

### ***Cuts to Medicare Advantage Program Reimbursements***

The United States Centers for Medicare & Medicaid Services will implement an 11-percent cut to Puerto Rico's Medicare Advantage program reimbursements for 2016. Puerto Rico's Medicaid plan has relied on a one-time, \$6.4 million block grant expected to run out in roughly 1 year. Without additional federal funding, Puerto Rico would receive less than \$400 million a year in Medicaid funds. Oregon, with roughly the same number of people as Puerto Rico, gets \$5 billion.<sup>23</sup> Puerto Rico generally fears that these cuts will contribute to further economic recession.<sup>24</sup>

### ***Trade and Labor Costs***

Puerto Rico's higher labor and transportation costs combine to make Puerto Rican firms less competitive.

The federal minimum wage and federal welfare benefits interact with Puerto Rico's average per capita income to result in a disincentive to Puerto Rican companies to hire employees, and to welfare beneficiaries to seek employment. The federal minimum wage allows minimum wage workers in Puerto Rico to receive the equivalent of 77 percent of Puerto Rico's average per

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<sup>18</sup> *Can Puerto Rico Reinvent Itself as a Global Competitor?*, Knowledge@Wharton (Aug. 22, 2012), <http://knowledge.wharton.upenn.edu/article/can-puerto-rico-reinvent-itself-as-a-global-competitor/> (last visited Dec. 30, 2015).

<sup>19</sup> *Id.*

<sup>20</sup> See generally J. Tomas Hexner and Glenn P. Jenkins, *Puerto Rico and Section 936: A Costly Dependence*, 10 Tax Notes Int'l 235 (Jan. 16, 1995). In 1989, pharmaceutical companies received 50 percent of Section 936 credits, but employed 17 percent of workers in firms receiving credits.

<sup>21</sup> Jens Manuel Krogstad, *Puerto Ricans leave in record numbers for mainland U.S.*, Pew Research Center (Oct. 14, 2015), <http://www.pewresearch.org/fact-tank/2015/10/14/puerto-ricans-leave-in-record-numbers-for-mainland-u-s/> (last visited Dec. 30, 2015).

<sup>22</sup> United States Census Bureau, Geographies: State - ACS Demographic and Housing Estimates 2014 American Community Survey 1-Year Estimates, <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none> (last visited Dec. 30, 2015); United States Census Bureau, Geographies: State - ACS Demographic and Housing Estimates 2009 American Community Survey 1-Year Estimates, <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none> (last visited Dec. 30, 2015).

<sup>23</sup> US News, *Puerto Ricans are watchful of cuts*, available at: <http://www.usnews.com/news/business/articles/2015/11/16/puerto-ricans-fear-for-their-health-as-federal-cuts-loom> (last visited on December 11, 2015).

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

capita income, compared to a similar full-time employee employed on the mainland United States, whose income is equal to 28 percent of per capita income.<sup>25</sup> Additionally, federal welfare payments are generous compared to Puerto Rico's per capita income.<sup>26</sup>

The Merchant Marine Act of 1920 requires all shipping between two United States ports to occur on ships that are built in the United States and owned and crewed by American citizens. This regulation results in significantly high shipping and transportation costs for trade in and out of Puerto Rico. As a result, firms generally choose to trade with Puerto Rico's neighboring islands, where trade costs are approximately half the cost found in Puerto Rico.<sup>27</sup> These increased labor and transportation costs place Puerto Rico in a weak position in view of global trade liberalization policies that remove tariff barriers which open competition to nations such as Mexico, Canada, Chile, Peru, and Columbia.<sup>28</sup>

### ***Puerto Rico's Debt***

Puerto Rico's government, including municipalities and government utilities, currently has \$72 billion of outstanding debt.<sup>29</sup> Approximately one-third of the payment due is for general obligation bonds, while the remainder is mostly due from public corporations operating vital services such as water, electricity, and the highway system.<sup>30</sup> Concerns about repayment led some creditors of the Electric Power Authority to agree to limited debt restructuring in late December 2015.<sup>31</sup> Puerto Rico's government previously defaulted on a \$58 million "moral obligation bond" in August 2015.<sup>32</sup> The crisis was accelerated when much of Puerto Rico's general debt was downgraded to junk status in early 2014.<sup>33</sup> This downgrade required the government to post cash as collateral to cover interest-rate swaps and sparked selling by mutual funds and other financial institutions which are prohibited from holding assets that are not investment-grade.<sup>34</sup>

Bonds issued by the Puerto Rico Urgent Interest Fund Corporation (COFINA) represent roughly \$16 billion of Puerto Rico's outstanding debt.<sup>35</sup> These bonds were sold to investors as a safe asset, since the government pledged a portion of the island's sales tax revenues to bond

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<sup>25</sup> Anne O. Kreuger, Ranjit Teja, and Andrew Wolfe, *Puerto Rico – A Way Forward* at 6, Government Development Bank of Puerto Rico, June 29, 2015, available at [www.bgfpr.com/documents/puertoricowayforward.pdf](http://www.bgfpr.com/documents/puertoricowayforward.pdf).

<sup>26</sup> *Id.* at 18.

<sup>27</sup> *Id.* at 8.

<sup>28</sup> Knowledge@Wharton, *supra* note 18.

<sup>29</sup> Michael Corkery and Mary Williams Walsh, *Governor of Puerto Rico Warns of Looming Default Without Bankruptcy Plan*, N.Y. Times (Dec. 16, 2015), <http://www.nytimes.com/2015/12/17/business/dealbook/governor-of-puerto-rico-warns-of-looming-default-without-bankruptcy-plan.html> (last visited Dec. 30, 2015).

<sup>30</sup> *Id.*

<sup>31</sup> Michelle Kaske and Erik Schatzker, *Puerto Rico Electric Reaches Tentative Pact With Creditors*, Bloomberg Business (Dec. 18, 2015), <http://www.bloomberg.com/news/articles/2015-12-18/puerto-rico-electric-said-to-reach-tentative-pact-with-creditors> (last visited Dec. 30, 2015).

<sup>32</sup> Corkery and Walsh, *supra* note 26.

<sup>33</sup> *Fitch becomes third agency to cut Puerto Rico to junk*, Reuters (Feb. 11, 2014), <http://www.reuters.com/article/munis-puertorico-ratings-idUSWNAB046DO20140211> (last visited Dec. 30, 2015).

<sup>34</sup> Mary Williams Walsh, *Worsening Debt Crisis Threatens Puerto Rico*, N.Y. Times (Oct. 7, 2013), [http://dealbook.nytimes.com/2013/10/07/worsening-debt-crisis-threatens-puerto-rico/?\\_r=0](http://dealbook.nytimes.com/2013/10/07/worsening-debt-crisis-threatens-puerto-rico/?_r=0) (last visited Dec. 30, 2015).

<sup>35</sup> Aaron Kuriloff, *'Safe' Puerto Rican Debt Stirs Worries*, The Wall Street Journal (Dec. 27, 2015), <http://www.wsj.com/articles/safe-puerto-rican-debt-stirs-worries-1451266037> (last visited Dec. 30, 2015).

repayment.<sup>36</sup> The rights of these bondholders, however, may be threatened if the government of Puerto Rico redirects funds pledged for the repayment of COFINA bonds to avoid default on general obligation debt.<sup>37</sup> Some analysts fear this outcome is likely since general obligation debt is protected by Puerto Rico's constitution.<sup>38</sup> This concern was partially realized on January 4, 2016, when Puerto Rico's government defaulted on \$174 million of non-general obligation bonds.<sup>39</sup>

Beyond its effect on Puerto Rico, the threat of default poses risks for investors in Florida. Puerto Rico's debt burden is the third highest in the nation, behind only California and New York.<sup>40</sup> Since the interest from Puerto Rican bonds is exempt from federal, state, and local taxes, the bonds are a popular choice for mutual funds.<sup>41</sup> Nearly 70 percent of domestic municipal bonds funds have exposure to Puerto Rico.<sup>42</sup>

## Potential Policies

### *Chapter 9 of the Bankruptcy Code or Other Forms of Debt Relief*

Municipal bankruptcy is governed by Chapter 9 of the Bankruptcy Code. The interactions between various provisions of the U.S. Constitution require municipal bankruptcy to be a cooperative enterprise between states and the federal government.<sup>43</sup> States would be unable to provide an effective resolution for debtors without violating the Contracts Clause,<sup>44</sup> while an entirely federal scheme would infringe on state sovereignty to control their municipalities under the Tenth Amendment.<sup>45</sup> The Bankruptcy Code does not prevent a state from creating its own insolvency procedures, as long as the state statute does not bind any creditors who do not consent to the procedures.<sup>46</sup>

To file for relief as a debtor under Chapter 9, an entity must meet five criteria:<sup>47</sup>

- The entity must be a municipality;<sup>48</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Mary Williams Walsh, *Puerto Rico Defaults on Debt Payments*, N.Y. Times (Jan. 4, 2016), [http://www.nytimes.com/2016/01/05/business/dealbook/puerto-rico-defaults-on-debt-payments.html?\\_r=0](http://www.nytimes.com/2016/01/05/business/dealbook/puerto-rico-defaults-on-debt-payments.html?_r=0) (last visited Jan. 6, 2016).

<sup>40</sup> Michelle Caruso-Cabrera, *Why Puerto Rico needs to borrow money—and soon*, CNBC (Jan. 24, 2014), <http://www.cnbc.com/2014/01/24/puerto-rico-debt-crisis-island-must-borrow-by-end-of-january.html> (last visited Dec. 30, 2015).

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

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

<sup>43</sup> *Franklin California Tax-Free Trust v. Puerto Rico*, 805 F.3d 322, 328 (1st Cir. 2015), *cert. granted*, 84 USLW 3100 (Dec. 4, 2015).

<sup>44</sup> U.S. Const. art. I, s. 10, cl. 1.

<sup>45</sup> *Id.* at 327-28.

<sup>46</sup> 11 U.S.C. s. 903.

<sup>47</sup> 11 U.S.C. s. 109(c).

<sup>48</sup> 11 U.S.C. s. 101(40) defines “municipality” to mean any political subdivision, public agency, or public instrumentality of the state. This definition encompasses counties, cities, special districts, school districts, and publicly-owned corporations.



- The entity must be specifically authorized to be a debtor under Chapter 9 by state<sup>49</sup> law or by a governmental official or organization empowered by state law to make such authorization;
- The entity must be insolvent;
- The entity must desire to effect a plan to adjust such debts; and
- The entity must meet one of the following four criteria:
  - The entity has obtained the agreement of the creditors holding a majority of the claims in each class of claims that would be impaired by the plan;
  - The entity has negotiated in good faith with creditors and has failed to obtain agreement of creditors holding a majority in each class of claims that would be impaired by the plan;
  - The entity is unable to negotiate with creditors because such negotiations are impracticable; or
  - The entity reasonably believes a creditor may attempt to obtain a transfer that is avoidable under s. 547 of the Bankruptcy Code.<sup>50</sup>

After a petition has been filed, the case is administered and directed similar to reorganizations under Chapter 11 of the Bankruptcy Code. The United States Trustee may appoint committees of creditors and of equity security holders<sup>51</sup> authorized to investigate issues and participate in formulating a restructuring plan.<sup>52</sup>

Puerto Rican municipalities are currently precluded from filing for bankruptcy under Chapter 9.<sup>53</sup> From 1938 (the first municipal bankruptcy statute) until 1978, Puerto Rico was defined as a state for all bankruptcy purposes, expressly able to afford bankruptcy protection to its municipalities.<sup>54</sup> The Bankruptcy Reform Act of 1978 removed the definition of “state” from the statute, placing the status of Puerto Rican municipalities under Chapter 9 into limbo.<sup>55</sup> When the definition of “state” was reintroduced to the Bankruptcy Code in 1984, the current language was added excluding Puerto Rico for the purpose of determining who qualified as a debtor under Chapter 9.<sup>56</sup>

Since its municipalities are ineligible for Chapter 9, Puerto Rico attempted to create an alternative bankruptcy-like process with the passage of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act.<sup>57</sup> The act created two paths for the restructuring of public corporations, a consensual out-of-court process and a judicially-managed in-court process, that closely parallel the Bankruptcy Code.<sup>58</sup> The act, however, was permanently enjoined by the United States District Court for the District of Puerto Rico on the grounds it is preempted by 11

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<sup>49</sup> 11 U.S.C. s. 101(52) defines “state” for the purposes of the bankruptcy code as including the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor in 11U.S.C. s. 109(c).

<sup>50</sup> 11 U.S.C. s. 547.

<sup>51</sup> 11 U.S.C. ss. 901, 1102. Since 1986, Florida and Puerto Rico have been represented by the same United States Trustee office. *See* Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554 s. 111(a) (1986), codified at 28 U.S.C. s. 581.

<sup>52</sup> 11 U.S.C. ss. 901, 1103.

<sup>53</sup> *See* 11 U.S.C. s. 101(52) (excluding Puerto Rico from the definition of “state” for the purposes of defining Ch. 9 debtors).

<sup>54</sup> *Franklin California Tax-Free Trust* at 329.

<sup>55</sup> *Id.* at 330.

<sup>56</sup> *Id.*

<sup>57</sup> 2014 P.R. Laws Act No. 71.

<sup>58</sup> *Puerto Rico Public Corporation Debt Enforcement and Recovery Act*, 128 Harv. L. Rev. 1320, 1322 (2015).

U.S.C. s. 903.<sup>59</sup> This decision was upheld by the United States Court of Appeals for the First Circuit and is currently awaiting hearing at the Supreme Court of the United States.<sup>60</sup>

### **Economic Development**

Structural reforms may provide another potential avenue for economic development in Puerto Rico. The labor force participation rate in Puerto Rico is approximately 40 percent, compared to 63 percent on the mainland.<sup>61</sup> This disparity is the result of federal policies that create disincentives for employers to hire workers and for potential employees to seek employment. A full-time employee working for minimum wage receives a salary equivalent to 77 percent of per capita income, compared to 28 percent on the mainland.<sup>62</sup> This disparity creates a strong constraint on employment for low-wage workers, with 28 percent of hourly workers in Puerto Rico earning less than \$8.50 per hour, compared to 3 percent on the mainland.<sup>63</sup> Some scholars have suggested additional labor market opportunities could be created by suspending the minimum wage in Puerto Rico until its per capita income is closer to that of the poorest state, or by setting a special minimum wage for Puerto Rico.<sup>64</sup> The federal government could create additional work incentives by restricting welfare programs in Puerto Rico to be more responsive to local labor market conditions, instead of using a one-size-fits-all approach.<sup>65</sup>

Puerto Rico's economy could be invigorated by measures to reduce transportation and energy costs. The Merchant Marine Act of 1920 (also known as the Jones Act) places a unique burden on Puerto Rico, as the island is almost completely dependent on ships for the delivery of goods. Import costs to the island are nearly double those of neighboring islands.<sup>66</sup> Exemptions for territories have proven successful at reducing shipping costs in the past. Congress exempted the U.S. Virgin Islands from the Jones Act in 1992 and today shipping costs are nearly half of those of shipping to Puerto Rico.<sup>67</sup> The Jones Act is a contributing factor in the island's high electricity costs, raising the cost of gasoline by 15 cents per gallon.<sup>68</sup> Over half of Puerto Rico's electricity generation utilizes petroleum.<sup>69</sup> Energy costs are also increased due to inefficiencies in the public-owned company responsible for producing and distributing energy.<sup>70</sup>

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<sup>59</sup> *Franklin California Tax-Free Trust* at 332.

<sup>60</sup> *Melba Acosta-Febo v. Franklin California Tax-Free Trust*, 2015 WL 5096465 (Dec. 4, 2015).

<sup>61</sup> Kreuger, Teja, and Wolfe, *supra* note 25, at 6. The labor force participation rate is the ratio of the labor force (all persons employed or unemployed and looking for work) as a percentage of the civilian non-institutional population (persons aged 16 or older who are not inmates of institutions and are not on active military duty). BLS Glossary, <http://www.bls.gov/bls/glossary.htm>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 17. Currently, American Samoa and the Northern Mariana Islands have special minimum wage rates. United States Dept. of Labor Wage and Hour Division, *Minimum Wages Laws in the States – January 1, 2015*, <http://www.dol.gov/whd/minwage/america.htm> (last visited Dec. 30, 2015).

<sup>65</sup> *Id.* at 18.

<sup>66</sup> *Id.* at 8.

<sup>67</sup> Patrick Holland, *Help Puerto Rico by Repealing the Jones Act*, e21 (July 15, 2015), <http://economics21.org/commentary/jones-act-puerto-rico-debt-crisis-anne-krueger-07-15-2015> (last visited Dec. 30, 2015).

<sup>68</sup> *Id.*

<sup>69</sup> United States Energy Information Administration, *Puerto Rico Territory Energy Profile*, <https://www.eia.gov/state/print.cfm?sid=RQ> (last visited Dec. 30, 2015).

<sup>70</sup> Kreuger, Teja, and Wolfe, *supra* note 24, at 8.

## Pending Legislation

There are currently three proposals pending in Congress to address the fiscal crisis in Puerto Rico.

The Puerto Rico Assistance Act of 2015, is currently pending in the Senate Finance Committee.<sup>71</sup> The bill creates the Puerto Rico Financial Responsibility and Management Assistance Authority to oversee financial planning and budgets for the Commonwealth and insolvent public corporations.<sup>72</sup> The bill commissions a study on public pension debt and requires the Commonwealth and local governments to conform to generally applicable reporting requirements.<sup>73</sup> The bill also contains a temporary employee payroll tax cut of 3.1 percent for calendar years 2016-2019 and 1.55 percent for calendar year 2020.<sup>74</sup>

The Puerto Rico Chapter 9 Uniformity Act of 2015, would amend the Bankruptcy Code to enable Puerto Rican municipalities to file for bankruptcy.<sup>75</sup>

The Puerto Rico Financial Stability and Debt Restructuring Choice Act combines the above approaches.<sup>76</sup> The bill would create the Puerto Rico Financial Stability Council.<sup>77</sup> The Governor of Puerto Rico would be required to submit the Commonwealth's annual budget to the council for final approval.<sup>78</sup> Any budget approved by the council must apply "sound budgetary practices," make progress on balancing the Commonwealth's budget, and be reviewed by an independent auditor.<sup>79</sup> The bill would also allow Puerto Rican municipalities to file for bankruptcy under Chapter 9 of the Bankruptcy Code.<sup>80</sup>

### III. Effect of Proposed Changes:

SM 798 urges Congress to promote economic recovery in Puerto Rico by:

- Enacting legislation to allow Puerto Rico to file for bankruptcy under Chapter 9 of the United States Bankruptcy Code;
- Allowing Puerto Rico to propose a comprehensive plan to pay its municipal and public utility debts under Chapter 9 of the United States Bankruptcy Code;
- Discontinuing the 11-percent reduction in Puerto Rico's Medicare Advantage program; and
- Establishing programs to encourage Puerto Rico's economic development in order to increase Puerto Rican manufacturing, trade, and employment.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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<sup>71</sup> Puerto Rico Assistance Act of 2015, S. 2381, 114th Cong. (2015).

<sup>72</sup> Puerto Rico Assistance Act of 2015, s. 321-328.

<sup>73</sup> Puerto Rico Assistance Act of 2015, s. 201-202.

<sup>74</sup> Puerto Rico Assistance Act of 2015, s. 101.

<sup>75</sup> Puerto Rico Chapter 9 Uniformity Act of 2015, H.R. 870, 114th Cong. (2015) Section 1774, contains identical language.

<sup>76</sup> See Puerto Rico Financial Stability and Debt Restructuring Choice Act, H.R. 4199, 114th Cong. (2015).

<sup>77</sup> Puerto Rico Financial Stability and Debt Restructuring Choice Act, s. 101.

<sup>78</sup> Puerto Rico Financial Stability and Debt Restructuring Choice Act, s. 202.

<sup>79</sup> Puerto Rico Financial Stability and Debt Restructuring Choice Act, s. 201.

<sup>80</sup> Puerto Rico Financial Stability and Debt Restructuring Choice Act, s. 301.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for the states to formally petition the federal government to act on a particular subject.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Soto

14-00889C-16

2016798\_\_

## Senate Memorial

A memorial to the Congress of the United States, urging Congress to enact legislation to promote economic recovery in the Commonwealth of Puerto Rico.

WHEREAS, the Commonwealth of Puerto Rico and the State of Florida share a strong cultural bond and are important trade partners, and

WHEREAS, the Commonwealth of Puerto Rico has experienced a prolonged and difficult economic recession that has led to mass unemployment in Puerto Rico and decreased trade opportunities with the State of Florida, and

WHEREAS, the Commonwealth of Puerto Rico has public debts in excess of \$72 billion, which continue to cripple Puerto Rico's ability to improve and sustain economic growth, and

WHEREAS, the 1984 amendments to the United States Bankruptcy Code prohibit the Commonwealth of Puerto Rico from authorizing its municipalities and public utilities to file for bankruptcy relief under Chapter 9 of the code, and

WHEREAS, the United States Bankruptcy Code amendments require Puerto Rico's municipalities and public utilities to engage in piecemeal negotiations with each of their creditors, rather than consolidating debt and developing a comprehensive plan for repayment, and

WHEREAS, the citizens of Puerto Rico are suffering greatly due to their government's inability to renegotiate the terms of this debt under a comprehensive plan, and

WHEREAS, the United States Government has an obligation to promote and assist the economic prosperity of the Commonwealth

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

14-00889C-16

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of Puerto Rico as an important territory of our nation, and

WHEREAS, the United States Centers for Medicare & Medicaid Services will be implementing an 11-percent cut to Puerto Rico's Medicare Advantage program reimbursements for 2016, further contributing to economic recession in Puerto Rico, and

WHEREAS, the United States Congress eliminated a tax exemption for manufacturers from Section 936 of the Internal Revenue Code, greatly contributing to an increase in unemployment in the Commonwealth of Puerto Rico, and

WHEREAS, the Commonwealth of Puerto Rico would greatly benefit from new ideas and programs that promote economic development to bring high paying jobs back to Puerto Rico, and

WHEREAS, the Commonwealth of Puerto Rico and the State of Florida would both benefit from Puerto Rico's renewed economic prosperity, NOW, THEREFORE,

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

That the Congress of the United States is urged to enact legislation to promote economic recovery in the Commonwealth of Puerto Rico, including:

(1) Allowing the Commonwealth of Puerto Rico to authorize its municipalities and public utilities to file for bankruptcy relief under Chapter 9 of the United States Bankruptcy Code.

(2) Allowing the Commonwealth of Puerto Rico to propose a comprehensive plan to pay municipal and public utility debts under Chapter 9 of the United States Bankruptcy Code.

(3) Discontinuing the proposed 11-percent reduction in Puerto Rico's Medicare Advantage program.

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

14-00889C-16

2016798\_\_

59 (4) Establishing programs to encourage economic development  
60 to promote increased manufacturing, trade, and employment in  
61 Puerto Rico.

62 BE IT FURTHER RESOLVED that copies of this memorial be  
63 dispatched to the President of the United States, to the  
64 President of the United States Senate, to the Speaker of the  
65 United States House of Representatives, and to each member of  
66 the Florida delegation to the United States Congress.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Rules, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Environmental Preservation and Conservation  
Finance and Tax  
Judiciary

JOINT COMMITTEE:  
Joint Committee on Public Counsel Oversight

**SENATOR DARREN SOTO**

*Minority Caucus Rules Chair*  
14th District

January 29, 2016

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

Chair Simmons,

I respectfully request that Senate Memorial 798, Promotion of Economic Recovery in Puerto Rico, be placed on the agenda as soon as possible. Senate Memorial 798 requests that Congress allow Puerto Rico's municipalities and public utilities to file for Chapter 9 Bankruptcy, and to discount the 11 percent deduction in Puerto Rico's Medicaid Advantage program.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: John B. Phelps, Staff Director  
Cissy DuBose, Committee Administrative Assistant

REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://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 No.:  
Judge:

Type:

Started: 2/10/2016 10:04:43 AM  
Ends: 2/10/2016 11:50:07 AM Length: 01:45:25

10:04:45 AM Senator Simmons calls the meeting to order  
10:04:51 AM roll call  
10:04:53 AM quorum present  
10:06:00 AM SB 298 temporary postponed  
10:06:18 AM SB 744 by Senator Bean  
10:06:23 AM Senator Bean explains the bill  
10:07:12 AM Senator Joyner with a question  
10:07:24 AM Senator Bean responds  
10:07:40 AM Gregg Prentice, citizen speaks against the bill  
10:11:09 AM Senator Gibson with a question  
10:11:30 AM Senator Bean responds  
10:12:24 AM Senator Gibson with a question  
10:12:35 AM Senator Bean responds  
10:13:27 AM Senator Gibson in debate  
10:13:58 AM Senator Bean responds  
10:14:20 AM Senator Bean waives close on the bill  
10:14:27 AM roll call on SB 744  
10:14:39 AM SB 744 reported favorable  
10:15:08 AM SB 914 by Senator Detert  
10:15:17 AM Senator Detert explains the bill  
10:17:37 AM Senator Joyner with a question  
10:17:44 AM Senator Detert responds  
10:18:03 AM Senator Joyner with a question  
10:18:12 AM Senator Detert responds  
10:19:36 AM Senator Joyner with a question  
10:19:42 AM Senator Detert responds  
10:19:51 AM Senator Detert waives close on the bill  
10:20:06 AM roll call on SB 914  
10:20:16 AM SB 914 reported favorable  
10:20:40 AM SB 1004 by Senator Hays  
10:20:49 AM Senator Hays explains the bill  
10:22:11 AM Senator Soto with a question  
10:22:18 AM Senator Hays responds  
10:22:37 AM Lauren Jackson, Consultant representing South Florida Regional Transportation Authority waives in support  
10:22:52 AM Lisa Bacot, Executive Director, representing Florida Public Transportation Association waives in support  
10:23:31 AM Sarah Carroll representing Florida Sheriffs Association waives in support  
10:23:47 AM Senator Soto in debate  
10:24:02 AM Senator Hays waives close on the bill  
10:24:12 AM roll call on SB 1004  
10:24:18 AM SB 1004 reported favorable  
10:24:51 AM SB 752 by Senator Abruzzo  
10:25:08 AM Senator Abruzzo explains the bill  
10:25:28 AM amendment 174386  
10:25:49 AM Senator Abruzzo explains the amendment  
10:26:15 AM Amendment 174386 adopted  
10:26:53 AM back on the bill as amended  
10:27:01 AM Senator Latvala with a question  
10:27:12 AM Senator Abruzzo responds  
10:27:50 AM Senator Soto in debate  
10:28:09 AM Senator Abruzzo waives close on the bill  
10:28:18 AM roll call on SB 752  
10:28:27 AM SB 752 reported favorable  
10:28:56 AM SB 762 by Senator Abruzzo  
10:29:11 AM Senator Abruzzo explains the bill  
10:30:10 AM Dan Hendrickson of the Big Bend Health Coalition waives in support  
10:30:30 AM Senator Abruzzo closes on the bill  
10:31:01 AM roll call on SB 762  
10:31:10 AM SB 762 reported favorable  
10:31:36 AM SB 846 by Senator Abruzzo  
10:31:52 AM Senator Abruzzo explains the bill  
10:32:49 AM Bob Harris with Diving Equipment & Marketing waives in support  
10:33:09 AM Senator Abruzzo closes on the bill  
10:33:19 AM roll call on SB 846  
10:33:37 AM SB 846 reported favorable  
10:34:08 AM SB 1278 by Senator Ring  
10:34:29 AM Joel Ramos presents the bill for Senator Ring  
10:35:16 AM Senator Gibson with a question

10:35:25 AM Joel Ramos responds  
10:36:11 AM Dan Henderson of the Big Bend Mental Health Coalition waives in support  
10:36:27 AM Staci Jagoe Student speaks  
10:37:51 AM Senator Joyner with a question  
10:37:59 AM Staci Jagoe responds  
10:38:46 AM Senator Joyner with a question  
10:38:55 AM Staci Jagoe responds  
10:39:40 AM Robert Trammel waives in support  
10:40:08 AM Senator Negron in debate  
10:41:36 AM Joes Ramos responds  
10:41:42 AM Senator Joyner in debate  
10:42:43 AM Joel Ramos waives close on SB 1278  
10:43:04 AM roll call SB 1278  
10:43:11 AM SB 1278 reported favorable  
10:43:43 AM SB 7048 by Senator Sobel  
10:44:09 AM Jeffery Scala represents the bill for Senator Sobel  
10:45:12 AM Jeffery Scala closes on SB 7048  
10:45:35 AM Jeffrey Scala waives close  
10:45:41 AM roll call  
10:45:44 AM SB 7048 reported favorable  
10:47:34 AM SB 582 by Senator Gaetz  
10:47:42 AM Senator Gaetz explains the bill  
10:49:47 AM Phil Archer, State Attorney waives in support  
10:50:08 AM Jan Rubino of the Florida League of Women Voters waives in support  
10:50:19 AM Ben Wilcox of Common Cause Florida waives in support  
10:50:33 AM Senator Gaetz waives close on the bill  
10:50:47 AM roll call on SB 582  
10:50:53 AM SB 582 reported favorable  
10:51:28 AM SB 250 by Senator Lee  
10:51:38 AM Senator Lee explains the bill  
10:57:47 AM Senator Gibson with a question  
10:58:05 AM Senator Lee responds  
10:58:12 AM Senator Gibson with a question  
10:58:20 AM Senator Lee responds  
10:59:50 AM Senator Gibson with a question  
11:00:18 AM Senator Lee responds  
11:01:03 AM Senator Montford with a question  
11:01:19 AM Senator Lee responds  
11:02:29 AM Senator Montford with a question  
11:02:38 AM Senator Lee responds  
11:04:15 AM Senator Soto with a question  
11:05:11 AM Senator Lee responds  
11:07:17 AM Senator Gibson with a question  
11:07:57 AM Senator Lee responds  
11:08:34 AM Senator Gibson with a question  
11:08:39 AM Senator Lee responds  
11:09:28 AM Jessica Gordon representing Pediatrics of Tampa Bay & Florida Breast Feeding  
11:10:13 AM coalition speaks  
11:13:55 AM Senator Montford with a question  
11:14:10 AM Jessica Gordon responds  
11:14:51 AM Senator Montford with a question  
11:15:08 AM Jessica Gordon responds  
11:15:42 AM Joan Meek, MD with Florida Breastfeeding Coalition speaks  
11:18:07 AM Senator Lee speaks  
11:18:54 AM Joan Meek responds  
11:19:15 AM Lisa Meotti, Student of University of West Florida speaks against the bills  
11:20:22 AM Senator Lee speaks  
11:20:55 AM Lisa Meotti responds  
11:21:22 AM Staci Jagoe student of University of West Florida waives in opposition  
11:21:40 AM Taylor Caragan waives in opposition  
11:22:00 AM James Taylor, parent, speaks  
11:23:31 AM Senator Lee speaks  
11:25:51 AM Cynthia Sears Florida Breastfeeding Coalition speaks  
11:26:31 AM Lisa Vargo, student University of West Florida speaks  
11:28:35 AM Senator Gibson in debate  
11:31:28 AM Senator Joyner in debate  
11:34:15 AM Senator Richter in debate  
11:35:14 AM Senator Lee closes on SB 250  
11:38:32 AM roll call SB 250  
11:38:37 AM SB 250 reported favorable  
11:39:14 AM SM 798 by Senator Soto  
11:39:22 AM Senator Soto explains the memorial  
11:39:28 AM Senator Gaetz with a question  
11:40:19 AM Senator Soto responds  
11:41:16 AM Senator Gaetz with a question  
11:41:24 AM Senator Soto responds  
11:42:29 AM Senator Soto closes on SM 798  
11:42:44 AM roll call on SM 798

**11:43:21 AM**  
**11:48:53 AM**  
**11:49:53 AM**

SM 798 reported unfavorable  
Senator Gibson moves we adjourn  
without objection meeting adjourned