

Tab 1 CS/SB 334 by JU, Steube; (Similar to CS/H 00469) Prejudgment Interest

266818	D	S	RS	RC, Lee	Delete everything after	03/09 12:15 PM
398962	SD	S	FAV	RC, Lee	Delete everything after	03/09 12:15 PM

Tab 2 CS/SB 352 by EE, Hutson; (Similar to H 00953) Legislative Redistricting and Congressional Reapportionment**Tab 3** SB 7004 by HP; (Compare to H 07041) OGSR/Peer Review Panels/Department of Health

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Thurston, Vice Chair

MEETING DATE: Thursday, March 9, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Benacquisto, Chair; Senator Thurston, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Flores, Galvano, Latvala, Lee, Montford, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 334 Judiciary / Steube (Similar CS/H 469)	Prejudgment Interest; Requiring a court to include interest in a final judgment in an action from which a plaintiff recovers economic or noneconomic damages; requiring a court to include interest on attorney fees and costs in the final judgment, if recovered, etc. JU 02/21/2017 Fav/CS RC 03/09/2017 Amendment Adopted - Temporarily Postponed	Amendment Adopted - Temporarily Postponed
2	CS/SB 352 Ethics and Elections / Hutson (Similar H 953)	Legislative Redistricting and Congressional Reapportionment; Providing that candidate qualifying, nomination, and election for certain offices must proceed using current district boundaries if revisions to districts subject to a court challenge are not made as of a certain date; specifying public oversight procedures that a court is encouraged to follow when drafting a remedial redistricting plan, etc. JU 02/07/2017 Favorable EE 02/21/2017 Fav/CS RC 03/09/2017 Favorable	Favorable Yeas 7 Nays 3
3	SB 7004 Health Policy (Compare H 7041)	OGSR/Peer Review Panels/Department of Health; Amending provisions relating to exemptions from public records and public meetings requirements for specified portions of meetings of certain peer review panels appointed by the Department of Health, for specified records generated by such peer review panels, and for research grant applications provided to such peer review panels; removing the scheduled repeal of the exemptions, etc. GO 02/21/2017 Favorable RC 03/09/2017 Favorable	Favorable Yeas 11 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 334

INTRODUCER: Judiciary Committee and Senator Steube

SUBJECT: Prejudgment Interest

DATE: March 8, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 334 expands the causes of action for which a prevailing plaintiff may recover prejudgment interest. Under current law, a person generally may not recover prejudgment interest on damages in personal injury and wrongful death actions. Under the bill, a court must include prejudgment interest in a final judgment awarding damages in any civil action, including personal injury and wrongful death claims. As a result, the bill applies prejudgment interest to damage awards for items such as medical bills, loss of past wages, funeral expenses, physical pain and suffering, mental anguish, and the loss of enjoyment of life.

Interest accrues on economic damages from the date of the loss of the economic benefit. Similarly, if noneconomic damages are awarded, the court must include prejudgment interest on each component of damages from the date that a defendant receives notice of a claim from a plaintiff.

If a plaintiff recovers attorney fees or costs, the court must include prejudgment interest in the final judgment. The interest begins to accrue on the date the entitlement to attorney fees is fixed through an agreement, an arbitration award, or when the court makes that determination.

The rate of interest that applies to awards of prejudgment interest is the rate set by the Chief Financial Officer pursuant to statute. The rate is currently 4.97 percent per annum.

This bill does not affect or interfere with the accrual of prejudgment interest to the extent that it is currently authorized by statute or common law.

II. Present Situation:

Civil justice is guided by the principle that an injured person should be compensated and restored to the same position that he or she was in before the injury occurred. This compensation is awarded to a plaintiff in the form of damages. Over the centuries, several forms of damages have evolved with varying degrees of acceptance. Prejudgment interest is one form of damages that was once rejected in most American jurisdictions but has now gained acceptance in a growing number of states.^{1,2}

Prejudgment Interest

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is interest on a judgment which is calculated from the date of the final judgment until the plaintiff collects the award from the defendant. Prejudgment interest is an additional award that compensates a plaintiff for the loss of the use of his or her money from the time the claim accrues until the final judgment.³ Post-judgment interest is designed to encourage the prompt payment of damages and to compensate for the inability to use the award while an unsuccessful appeal is resolved.

Under English common law, prejudgment interest was permitted for claims that were “liquidated” but not for claims that were “unliquidated.” A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount. In personal injury law, examples of unliquidated damages include damages for pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.⁴

¹ Historically, many religious groups believed that charging interest was immoral and a form of usury prohibited by religious law. Therefore, interest was awarded sparingly and in a limited number of cases, but only at the discretion of the jury. By the 1800s, this prohibition began to recede and American courts awarded interest on a small group of claims, but only when the amount of the claim was certain and when it was payable on a specific date. See Aric Jarrett, *Comment: Full Compensation, Not Overcompensation: Rethinking Prejudgment Interest Offsets in Washington*, 30 SEATTLE U. L. REV. 703, 707 (Spring, 2007).

² Email from Heather Morton, Program Principal, National Conference of State Legislatures (Feb. 9, 2017) (on file with the Senate Committee on Judiciary) and Florida Justice Association, *Prejudgment Interest in Tort Cases, A Question of Fairness and Efficacy*, 12 (Feb. 2017) (on file with the Senate Committee on Judiciary). The reports are not in complete agreement, perhaps because different research methodologies or search terms were employed. Both surveys agreed that Alabama, Arizona, Arkansas, Florida, and Kansas do not currently have statutes permitting prejudgment interest. The surveys agreed on some specific states that do allow prejudgment interest. Beyond that point, the surveys often disagreed as to which additional states do not permit prejudgment interest. Perhaps some states do not explicitly provide for pre-judgment interest by statute but may permit limited forms of pre-judgment interest awards through case law.

³ 44B AM. JUR. 2D INTEREST AND USURY s. 39 (2016).

⁴ *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.*, 474 So. 2d 212 (Fla. 1985).

Florida law generally prohibits the award of prejudgment interest for plaintiffs in personal injury⁵ and wrongful death claims, but does allow it in some tort areas.⁶ The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule occurs when a plaintiff can establish that he or she suffered the loss of a vested property right, such as a negligently destroyed building.⁷ Prejudgment interest has historically been allowed in this state for actions based on contract and the interest accrues from the date the debt is due.⁸

Two theories of prejudgment interest have developed over time. Under the “loss theory,” prejudgment interest is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.⁹ The Florida Supreme Court follows this theory wherein the loss, itself, is the wrongful deprivation. The second theory, which is not followed in Florida, is the “penalty theory” where prejudgment interest is awarded to penalize the defendant.¹⁰

Proponents who seek prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation is protracted. Opponents assert that prejudgment interest provides over-compensation and encourages premature settlements.

Economic Damages

Economic damages are damages that can be computed from records or documents. They generally include past and future medical bills, loss of past wages and future earning capacity, funeral expenses, and damage to someone’s personal or real property.¹¹

Noneconomic Damages

Non-economic damages are the subjective intangible items that cannot be measured with certainty. Those items generally include physical pain and suffering, mental anguish, and the loss of enjoyment of life. Unlike economic damages, which are defined in chapter 768, pertaining to negligence, noneconomic damages are not defined there.¹²

⁵ *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (Fla. 1955).

⁶ *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.

⁷ *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).

⁸ *Lumbermens Mut. Casualty Co. v. Percefull*, 653 So. 2d 389 (Fla. 1995).

⁹ *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.

¹⁰ *Bosem v. Musa Holdings, Inc.* 46 So. 3d 42, 45 (Fla. 2010).

¹¹ See s. 768.81(1)(b), F.S., for a more detailed list of economic damages.

¹² Noneconomic damages are defined in ch. 766, Medical Malpractice and Related Matters, as “nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law,” Section 766.202, F.S.

Attorney Fees

The Florida Bar regulates fees that an attorney may charge and collect.¹³ In addition to setting out factors that should be considered when determining what a reasonable fee is, the bar's Rules of Professional Conduct also establish the particulars that must be contained in a contingency fee agreement as well as the percentages that may be charged. Contingency fee agreements are generally used in personal injury cases. If the plaintiff prevails, the plaintiff's attorney receives a predetermined percentage of the fees plus litigation costs, but if the plaintiff loses, the attorney does not recover fees and costs.

Costs

If a plaintiff prevails in an action, he or she is entitled to recover some of the costs involved in the litigation. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, the burden of proof is on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case when the action was taken. The guidelines are advisory only, and the taxation of costs decision is within the broad discretion of the court.¹⁴

III. Effect of Proposed Changes:

The bill significantly expands the causes of actions for which a prevailing plaintiff may recover prejudgment interest. Current law generally prohibits the award of prejudgment interest for damages in personal injury and wrongful death claims. This bill permits the recovery of prejudgment interest for damages in any civil action, including personal injury and wrongful death claims. This bill also permits a prevailing plaintiff to recover prejudgment interest for economic or noneconomic damages, attorney fees, or costs and a court is required to include the amount of interest in the final judgment.

Interest for Economic and Noneconomic Damages

The bill requires a court, in its final order in which a plaintiff recovers economic or noneconomic damages, to include prejudgment interest on each component of damages. When awarding interest for economic damages, the interest accrues from the date of the loss of the economic benefit. When awarding interest for noneconomic damages, the interest accrues from the date the defendant received notice of a claim from the plaintiff.

¹³ Rules Regulating the Florida Bar, Rules of Professional Conduct, Rule 4-1.5.

¹⁴ Fla. R. Civ. P. Taxation of Costs. The costs that should be taxed generally include costs associated with certain depositions, documents and exhibits, expert witnesses, witnesses, court reporting costs other than for depositions, and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem. Litigation costs that may be taxed as costs include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses. Litigation costs that should not be taxed as costs include the cost of long distance telephone calls with witnesses, any expenses relating to consulting but non-testifying experts, cost incurred in connection with any matter which was not reasonably calculated to lead to the discovery of admissible evidence, the travel time of attorneys and experts, travel expenses of attorneys, and the cost of privilege review of documents, including electronically stored information. See the guidelines for more specific criteria, available at

[https://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](https://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf) at 347-349.

Interest on Attorney Fees or Costs

When a plaintiff recovers attorney fees or costs, the court must also include the interest on the fees or costs in its final judgment. The interest begins to accrue on the date the entitlement to attorney fees is fixed through an agreement, an arbitration award, or when the court makes that determination.¹⁵

The applicable rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S. The Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current interest rate is 4.97 percent.¹⁶

The bill has no retroactive application and only applies to causes of action that accrue on or after July 1, 2017. However, the bill does not affect the accrual of prejudgment interest to the extent that it is currently authorized by statute or common law.

The bill takes effect July 1, 2017.

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:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by awards of receive prejudgment interest. Defendants may have an incentive to settle lawsuits to avoid the accrual of prejudgment interest.

¹⁵ From a practical standpoint, if a plaintiff had numerous medical visits at various facilities that stretched over an extended period of time, the process for calculating those expenses and varying interest rates could become complicated and lengthy.

¹⁶ Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates*, <http://www.myfloridacfo.com/division/AA/Vendors/> (Last visited Feb. 6, 2017).

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 334. However, in an analysis of a similar bill from 2015, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.¹⁷ However, it appears unlikely that the bill will result in significant workload to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 55.035, 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 February 21, 2017:**

The committee substitute differs from the underlying bill in the following ways:

- Prejudgment interest for noneconomic damages accrues from the date that the defendant receives notice of a claim by the plaintiff.
- Prejudgment interest on attorney fees or costs begins to accrue on the date of the entitlement of the award which is fixed through an agreement, arbitration award, or court determination.
- Language is deleted which states that interest may not accrue on prejudgment interest that was awarded in the final judgment.
- Language is added to clarify that the bill does not affect prejudgment interest to the extent that it is currently authorized by statute or common law.
- The bill has no retroactive application, and only applies to causes of action that accrue on or after July 1, 2017.

B. Amendments:

None.

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

¹⁷ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 794* (March 31, 2015) (on file with the Senate Committee on Judiciary).



266818

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/09/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 55.035, Florida Statutes, is created to
read:

55.035 Prejudgment interest.—In any action in which a
plaintiff recovers noneconomic damages, a court may award
prejudgment interest upon a motion by the plaintiff if the court
finds that the award is warranted based on the nature of the
damages, the time elapsed between the date the defendant



266818

12 received written notice of the claim and the verdict or
13 judgment, and the conduct of the parties and counsel in
14 expeditiously resolving the case. The interest rate that applies
15 to prejudgment interest awarded under this section is the rate
16 established pursuant to s. 55.03.

17 Section 2. This act does not affect the accrual of
18 prejudgment interest before the effective date of the act if
19 otherwise authorized by statute or common law.

20 Section 3. This act shall take effect July 1, 2017, and
21 shall apply to causes of action that accrue on or after that
22 date.

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause
27 and insert:

28 A bill to be entitled
29 An act relating to prejudgment interest; creating s.
30 55.035, F.S.; authorizing a court to award prejudgment
31 interest on noneconomic damages under certain
32 circumstances; specifying the rate at which interest
33 accrues; providing for construction and applicability;
34 providing an effective date.



398962

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

1 **Senate Substitute for Amendment (266818) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 55.035, Florida Statutes, is created to
7 read:

8 55.035 Prejudgment interest.—In any action in which a
9 plaintiff recovers noneconomic damages, a court may award
10 prejudgment interest on those damages upon a motion by the
11 plaintiff if the court finds that the award is warranted based



398962

12 on the nature of the damages, the time elapsed between the date
13 the defendant received written notice of the claim and the
14 verdict or judgment, and the conduct of the parties and counsel
15 in expeditiously resolving the case. The interest rate that
16 applies to prejudgment interest awarded under this section is
17 the rate established pursuant to s. 55.03.

18 Section 2. This act does not affect the accrual of
19 prejudgment interest before the effective date of the act if
20 otherwise authorized by statute or common law.

21 Section 3. This act shall take effect July 1, 2017, and
22 shall apply to causes of action that accrue on or after that
23 date.

24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete everything before the enacting clause
28 and insert:

29 A bill to be entitled
30 An act relating to prejudgment interest; creating s.
31 55.035, F.S.; authorizing a court to award prejudgment
32 interest on noneconomic damages under certain
33 circumstances; specifying the rate at which interest
34 accrues; providing for construction and applicability;
35 providing an effective date.

By the Committee on Judiciary; and Senator Steube

590-01947-17

2017334c1

1 A bill to be entitled
 2 An act relating to prejudgment interest; creating s.
 3 55.035, F.S.; requiring a court to include interest in
 4 a final judgment in an action from which a plaintiff
 5 recovers economic or noneconomic damages; specifying
 6 the dates from which interest accrues; requiring a
 7 court to include interest on attorney fees and costs
 8 in the final judgment, if recovered; specifying the
 9 rate at which interest accrues; providing for
 10 construction and applicability; providing an effective
 11 date.
 12

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

15 Section 1. Section 55.035, Florida Statutes, is created to
 16 read:

17 55.035 Prejudgment interest.—

18 (1) In any action in which a plaintiff recovers economic or
 19 noneconomic damages, the court shall include interest on each
 20 component of damages in the final judgment.

21 (a) For economic damages, interest accrues from the date of
 22 the loss of an economic benefit to the plaintiff.

23 (b) For noneconomic damages, interest accrues from the date
 24 the defendant received notice of a claim from the plaintiff.

25 (2) If the plaintiff recovers attorney fees or costs, the
 26 court shall include in the final judgment interest on such fees
 27 or costs beginning on the date the entitlement to attorney fees
 28 is fixed through an agreement, an arbitration award, or a court
 29 determination.

Page 1 of 2

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

590-01947-17

2017334c1

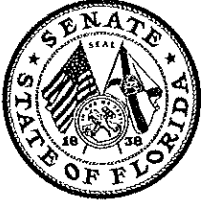
30 (3) The rate of interest applicable to this section is the
 31 rate established pursuant to s. 55.03.

32 Section 2. This act does not affect the accrual of
 33 prejudgment interest before the effective date of the act if
 34 otherwise authorized by statute or common law.

35 Section 3. This act shall take effect July 1, 2017, and
 36 shall apply to causes of action that accrue on or after that
 37 date.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

February 21, 2017

The Honorable Lizbeth Benaquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 334 – Prejudgement Interest, has been referred to the Senate Rules Committee. This bill passed the Senate Judiciary Committee on February 21. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in black ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/17

Meeting Date

SB 334

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.
Street

Phone 850-445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@afb.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

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)

03.09.17

Meeting Date

334

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Andrew Bolin

Job Title _____

Address 201 One Tampa City Center - Suite 2900

Phone 813-226-3000

Street

Tampa

FL

33602

Email asb@bmmbw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

3/9/17
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General ~~Adviser~~ Counsel

Address 227 South Adams St.
Street

Phone 222-4082

Tallahassee FL 32301
City State Zip

Email Samantha@frf.org

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-9-17

Meeting Date

334

Bill Number (if applicable)

Topic Pre-Judgment Interest

Amendment Barcode (if applicable)

Name Bob O'Malley

Job Title RVP

Address 283 Cranes Roost Blvd #111

Phone 407-803-3969

Street

Altamonte Springs FL 32701

Email Bob_OMalley@CSX.com

City

State

Zip

Speaking: For Against Information

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

Representing CSX Transportation

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

3-9-17

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

Meeting Date

334

Bill Number (if applicable)

Topic Pre-Judgment Interest

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title

Address 108 S. Monroe St Suite 200

Phone

Street

Tallahassee Fla 32301

Email

City

State

Zip

Speaking: For [] Against [x] Information []

Waive Speaking: In Support [] Against []

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

Representing Institute for Legal Reform

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/17

SB 334

Meeting Date

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/2017

Meeting Date

334

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave 5
Street

Phone 727/897-9291

St. Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Trustee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-9-17

Meeting Date

SB 334

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Jimmy Gustafson

Job Title _____

Address 1567 Cristobal Drive

Phone 850-251-4011

Street

Tallahassee FL

32303

City

State

Zip

Email jwg@searaylaw.com

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/17
Meeting Date

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

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Logan Mc Faddin

Job Title Regional Manager for PCI

Address 215 S. Monroe St

Phone

Street

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 Property Casualty Insurer Assoc of America

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)

3/9/17

Meeting Date

25 for SB 334
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gerald Wester

Job Title _____

Address 101 E College Ave 5500

Phone 850 445 7256

Street

Tallahassee

FL

32301

Email Gwester@capacityconsult.com

City

State

Zip

Speaking: For Against Information

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

Representing American Insurance Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/9/17
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Adam Basford

Job Title

Address 310 W College Ave
Street
Tallahassee FL 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 FL Farm Bureau

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-9-17

Meeting Date

334

Bill Number (if applicable)

Topic Pre Judgment Interest

Amendment Barcode (if applicable)

Name Bob Harris

Job Title _____

Address 2618 Centennial Place

Phone 277-0720

Street

Tallahassee FL 32308

Email bharris@lauffa.com

City

State

Zip

Speaking: For Against Information

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

Representing PAEC - Panhandle Area Education Consortium

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/2017

Meeting Date

SB 334

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Counsel

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City

State

Zip

Email mark.delegal@hklaw.com

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/17

Meeting Date

334

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name MICHAEL CARLSON

Job Title President

Address 215 S. Monroe St Ste. 835

Phone 850 544 5576

Tall FL 32301

City State Zip

Email Michael.Carlson@Piff.net

Speaking: For Against Information

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

Representing PERSONAL INSURANCE FEDERATION

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)

09 MAR 2017
Meeting Date

334
Bill Number (if applicable)

Topic PREJUDGMENT INTEREST

266818
Amendment Barcode (if applicable)

Name PAUL JESS

ON AMENDMENT

Job Title _____

Address 218 S. MONROE ST
Street

Phone 850 224-9403

TALLAHASSEE FL 32301
City State Zip

Email Ajess@floridajusticeassociation.org

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 352

INTRODUCER: Ethics and Elections Committee and Senator Hutson

SUBJECT: Legislative Redistricting and Congressional Reapportionment

DATE: March 8, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Fox</u>	<u>Ulrich</u>	<u>EE</u>	Fav/CS
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 352 provides clarity to courts and candidates when redistricting challenges are unresolved and elections are approaching.

If a redistricting challenge is pending 71 days before a primary election, the district boundaries in place on the 71st day before the primary election will control for the upcoming election cycle. If revisions are ordered after that point, the revised district boundaries will control beginning with future primary and general elections.

If congressional district boundaries are revised after federal qualifying ends on the 116th day before a primary election, then a congressional candidate must requalify in accordance with the revised districts during the qualifying period for state candidates that runs between the 71st and 67th days before the primary election.

Additionally, courts are encouraged to follow certain enumerated procedures to maintain public oversight when drafting a remedial redistricting plan.

The bill states that its provisions do not supersede or impair the State Constitutional provisions governing the judicial review of apportionment.

II. Present Situation:

The terms “redistricting” and “reapportionment” are often used interchangeably to describe the process of drawing new congressional and state legislative district boundaries. Legislative and congressional districts are redrawn after each decennial census to accommodate population growth and shifts. Redistricting also ensures that each district contains nearly equal populations as required by law. In Florida, redistricting recently involved the Legislature redrawing 27 congressional districts and 160 legislative districts.

At the federal level, through congressional reapportionment, the 435 seats in the United States House of Representatives are redistributed after the decennial census among the 50 states based upon their relative population changes as determined by the decennial census. Each state then determines how to draw its congressional districts. In addition to case law and federal legislation, the State Constitution and the United States Constitution provide direction on legislative redistricting and congressional reapportionment.

State Legislative Districts

The State Constitution provides the framework for establishing and validating geographical districts for state senators and representatives. In the second year after each decennial census, the Legislature is directed to apportion the state into no fewer than 30, nor more than 40 senate districts, and into no fewer than 80, nor more than 120 representative districts. The districts must consist of contiguous territory. The redistricting process must be completed in compliance with the State and United States Constitutions,¹ and is subject to mandatory review by the Florida Supreme Court.

U.S. Congressional Districts

The United States Constitution provides that members of the United States House of Representatives will be apportioned among the states according to their respective numbers.² Additionally, the Constitution requires an “enumeration” or census to be made every 10 years. Surprisingly, the Constitution does not require an apportionment after a census nor does it describe a particular method for the process. The Apportionment Act of 1941 specifies the apportionment method, establishes the House membership at 435 representatives, mandates an apportionment every 10 years, and designates the administrative procedures that will be used for

¹ FLA. CONST. art. III, s. 16. Florida currently has 40 Senate districts and 120 House of Representatives districts. The House of Representative districts are described in s. 10.12, F.S. The Senate districts described in s. 10.13, F.S., represent the districts as drawn in legislation that was later held unconstitutional and, thus, do not represent the districts as ordered by the Florida Supreme Court.

² Amendment XIV, section 2, modified Article 1, section 2, of the United States Constitution. The original language specified that the “Number of Representatives shall not exceed one for every thirty Thousand,” with each state having at least one Representative.

apportionment.³ Florida is entitled to 27 U.S. Representatives in Congress based upon the 2010 Census.^{4,5}

While the State Constitution does not contain any direction on the process for establishing congressional districts, the United States Constitution provides that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof;”⁶

Process for Developing and Reviewing District Maps

During the regular session of the Legislature in the second year following the decennial census, the Legislature is required to adopt a joint resolution that apportions the state into Senate and House districts. Because the Legislature adopts a joint resolution, rather than passing a general bill, the measure does not require the Governor’s approval, nor is it subject to a veto. The district boundaries are subject to mandatory review by the Florida Supreme Court.

The State Constitution prescribes the process that must be followed when the Court determines that the newly created districts are valid and when they are invalid. When the Supreme Court enters a judgment that the plan is valid, the plan becomes binding upon all citizens of the state.

In contrast, the process for enacting Congressional districts differs in two ways. The districts are not established in a joint resolution, but in a general bill that is subject to a Governor’s veto. Additionally, the maps do not require mandatory review by the Florida Supreme Court.

If the Legislature Fails to Adopt an Apportionment Resolution⁷

If the Legislature adjourns without apportioning the state into the necessary districts, the Governor shall, within 30 days, issue a proclamation reconvening the Legislature in a special apportionment session. That session may not exceed 30 consecutive days. It is the Legislature’s mandatory duty to adopt a joint resolution of apportionment during that session and no other business may be transacted.⁸ If the Legislature adjourns without adopting the joint resolution of apportionment, the Attorney General must, within 5 days, petition the Florida Supreme Court to make the apportionment. The Court then has 60 days after the Attorney General’s petition is filed to file its order with the custodian of state records making the apportionment.⁹

³ Congressional Research Service, *The U.S. House of Representatives Apportionment Formula in Theory and Practice*, (Aug. 2, 2013), available at <https://www.everycrsreport.com/reports/R41357.html> (last accessed Feb. 14, 2017)

⁴ Directory of Representatives, United States House of Representatives, available at http://www.house.gov/representatives/#state_fl. (last accessed Feb. 14, 2017).

⁵ The single-member districts for the U.S. House of Representatives are described in s. 8.002, F.S. However, the districts described there represent the last legislation passed by the Legislature and do not contain the revisions required by the Florida Supreme Court in *The League of Women Voters of Florida v. Detzner*, Case No. SC14-1905 (2015).

⁶ U.S. CONST. art. 1, s. 4.

⁷ This process only applies to the regular session in the second year after the decennial census.

⁸ FLA. CONST. art. III, s. 16(a).

⁹ FLA. CONST. art. III, s. 16(b).

Judicial Review and Procedure

Within 15 days after the Legislature passes a joint resolution of apportionment, the Attorney General must petition the Florida Supreme Court for a declaratory judgment that determines the validity of the apportionment. The Court is required to permit adversary interests to present their views challenging the validity of the apportionment. The Court then must enter its judgment within 30 days after the filing of the Attorney General's petition.¹⁰ If the Court determines that the apportionment made by the Legislature is not valid, the Governor is required to reconvene the Legislature, by proclamation, within 5 days, in an extraordinary apportionment session that may not exceed 15 days. The Legislature is then required to adopt a joint resolution of apportionment that conforms to the Supreme Court's judgment.¹¹

Within 15 days after the Legislature adjourns the extraordinary apportionment session, the Attorney General is required to petition the Florida Supreme Court and provide the apportionment resolution. The Court will then consider the validity of the resolution as though it were adopted at a regular or special apportionment session. The court will permit adversary interests to present their views and, within 30 days of the Attorney General's petition, render a judgment. If no resolution was adopted, the Attorney General must so inform the Court.¹²

If the Legislature does not adopt an apportionment resolution during the extraordinary apportionment session, or the Supreme Court declares it invalid, the Court must, within 60 days after receiving the Attorney General's petition, file an order with the custodian of state records making an apportionment.¹³

According to the Senate Reapportionment website,¹⁴ in 1972 and 2002 the process progressed smoothly from the Legislature to the Attorney General and Supreme Court without problems and was soon binding on all citizens of the state. In 1982 and 1992, the Legislature did not adopt a joint resolution initially and was reconvened by the Governor. The resulting plan progressed to the Attorney General and the Supreme Court and was declared valid.

What occurred in 2012 was quite different from previous redistricting efforts. The redistricting plans were litigated over almost four years through different state courts before being declared valid. A detailed discussion follows below at "2012 Apportionment and Ensuing Litigation."

Election Dates and Qualifying Periods for Nomination and Election to Office

A general election is conducted in November of each even-numbered year.¹⁵ A primary election, held for nominating a party candidate to run in the general election, is conducted 10 weeks

¹⁰ FLA. CONST. art. III, s. 16(c).

¹¹ FLA. CONST. art. III, s. 16(d).

¹² FLA. CONST. art. III, s. 16(e).

¹³ FLA. CONST. art. III, s. 16(f).

¹⁴ *Florida Constitution, Article III, Section 16*, available at

<http://www.flsenate.gov/usercontent/session/redistricting/ReapportionmentProcess.pdf>.

¹⁵ Section 100.031, F.S. The statute provides that the "general election shall be held in each county on the first Tuesday after the first Monday in November . . . to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election and . . . to fill each vacancy in elective office for the unexpired portion of the term."

before the general election.¹⁶ In 2016, the primary election was held on Tuesday, August 30, and the general election was held on Tuesday, November 8.

Federal Office

The Florida Election Code¹⁷ prescribes the qualifying dates for candidates seeking office. Qualifying periods for federal office differ depending upon whether it is an apportionment or non-apportionment year. In non-apportionment years, candidates seeking a congressional office must qualify between noon on the 120th day and noon on the 116th day before the primary election.¹⁸

In years when the Legislature apportions the state, the qualifying period occurs 7 weeks later in the calendar year, between noon on the 71st day and no later than noon of the 67th day before the primary election.¹⁹ This later qualifying period is apparently done as an accommodation to the possibility that a protracted reapportionment session or multiple sessions might be required to sort out a final redistricting plan before it is time to qualify. The courts delayed the qualifying period in 2016 because of the apportionment litigation. The qualifying dates were Monday, June 20 – Friday, June 24, 7 weeks later than the 2014 qualifying dates that were April 28 – May 2.²⁰

State Senators and Representatives

The qualifying dates for state senator and state representative begin at noon on the 71st day before the primary election and end no later than noon of the 67th day before the primary election.²¹ The election laws do not prescribe any different qualifying dates in a year in which the Legislature apportions state Senate or House of Representatives offices.

The Fair Districts Amendments to the State Constitution

The State Constitution was amended in November 2010 to incorporate legislative standards for establishing congressional district boundaries²² and legislative district boundaries.²³ These amendments are commonly known as the Fair District Amendments. They are set forth in two tiers. In general terms, the new standards require that an apportionment plan or individual district:

- Not be drawn with the intent to favor or disfavor a political party or incumbent;
- Not be drawn to deny or abridge the equal opportunity of racial or language minorities to participate in the political process or diminish their ability to elect representatives of their choice; and
- Consist of contiguous territory.

¹⁶ Section 100.061, F.S.

¹⁷ The Florida Election Code is contained in chapters 97-106, F.S.

¹⁸ Section 99.061(1), F.S.

¹⁹ Section 99.061(9), F.S.

²⁰ *2014 Federal Qualifying Handbook*, Florida Division of Elections, available at <http://dos.myflorida.com/media/695447/federal-qualifying-handbook-2014.pdf>.

²¹ Section 99.061(1), F.S.

²² FLA. CONST. art. III, s. 20.

²³ FLA. CONST. art. III, s. 21.

Unless compliance with the standards creates a conflict in complying with federal law, the districts are to be drawn as nearly equal in population as is practicable, be compact, and use existing political and geographical boundaries where feasible.

2012 Apportionment and the Ensuing Litigation

In February 2012, the Legislature established new congressional, state Senate and House districts based upon the 2010 Census. The newly drawn Congressional and state Senate districts soon met constitutional challenges and extensive litigation ensued. The House districts, however, were approved by the Supreme Court and were not further challenged in court. They stood as originally enacted. At issue in the litigation was whether the Legislature had complied with the new 2010 Fair Districts Amendments when drawing the plans. The Senate plan created one line of cases that began in the Florida Supreme Court and then involved the Second Judicial Circuit Court of Leon County. The separate Congressional line of cases involved those same courts, in varying patterns, but with different litigants. The Florida Supreme Court issued eight separate apportionment opinions, the trial court issued additional opinions, and litigation spanned nearly 4 years in the state courts.

The litigation often proved confusing to candidates hoping to qualify and run for office because the candidates were uncertain where the district boundaries were located. Below is a brief synopsis of some of the highlights of the redistricting timeline.²⁴

Congressional Districts

2012

The Legislature passed a congressional redistricting plan that was signed by the Governor in February. The congressional reapportionment plan is not subject to mandatory Florida Supreme Court review like the House and Senate plans are. If someone wants to challenge the congressional plan, he or she must initiate a lawsuit in the Second Judicial Circuit in and for Leon County, located in Tallahassee.

2013

Issues of legislative privilege arose during discovery and the Florida Supreme Court ruled that legislators do not have an absolute privilege against discovery in those proceedings. Two additional appeals raised pretrial issues before the Supreme Court.

2014

Two separate groups of plaintiffs filed civil complaints in circuit court challenging the validity of the Congressional plan. The cases were consolidated and a 12-day bench trial began in June. In July, the Second Judicial Circuit Court declared two of the 27 congressional districts invalid and concluded that the Legislature had acted with impermissible partisan intent. The court directed the Legislature to convene and redraw the congressional districts. In August, the revised plan passed and was approved by the circuit court. The plaintiffs appealed the circuit court's approval of the revised plan. The circuit court, recognizing the late time involved, chose to require that the

²⁴ See also Redistricting Timeline, The Florida Senate, available at [http://www.flsenate.gov/Session/Redistricting/About.\(last accessed Feb. 14, 2017\)](http://www.flsenate.gov/Session/Redistricting/About.(last%20accessed%20Feb.%2014,%202017))

2012 maps govern for the 2014 elections and any new maps control for subsequent elections.
The primary election was held in August and the general election was held in November.

2015

Upon appeal in July, the Florida Supreme Court invalidated eight of the 27 congressional districts. The Court affirmed the judgment of the trial court but concluded that the court erred in some respects. The Court relinquished the case to the trial court for 100 days and instructed the Legislature to draw another remedial map. The Legislature met in August but was unable to agree on a remedial congressional plan and adjourned without adopting one. The House and Senate submitted two separate plans to the court and the plaintiffs submitted five plans. In October, the circuit court selected one of the plaintiff's maps. In December, the Florida Supreme Court approved the trial court's decision and ordered its use for the 2016 election. That plan was used in the 2016 primary and general elections and will be used in future congressional elections until the next decennial redistricting.

2016

The qualifying period was held in June, the primary election was held August 30, and the general election was held on November 8.

State Senate and House Districts

2012

After the Legislature passed redistricting plans in February, the Florida Supreme Court issued a decision in March, based upon a facial review of the State Senate and State House districts, and declared that all 120 House districts were valid and that 32 of the 40 Senate districts were valid. The Court determined that eight districts did not comply with the Fair Districts standards. This Supreme Court review is mandated in the State Constitution. The Legislature then met in an extraordinary apportionment session in March and passed a revised Senate plan. In April, the Florida Supreme Court declared the revised Senate plan valid, based upon a facial review conducted on a limited record.

Candidates qualified for office between June 4 and 8. The primary election was held on August 14 and the general election on November 6.

In September, however, a group of 10 plaintiffs filed a lawsuit in the Second Judicial Circuit of Leon County challenging the constitutionality of the Senate plan. The Legislature petitioned the Florida Supreme Court and argued that it had exclusive jurisdiction over the redistricting challenges.

2013

In July, the Florida Supreme Court rejected the Legislature's position and determined that the plaintiffs could proceed with their lawsuit challenging the validity of the 2012 Senate redistricting plan. The Court determined that the circuit court had subject matter jurisdiction over the case and permitted the litigation to continue.

2015

In July, the Senate entered into a Stipulation and Consent Judgment after an additional apportionment ruling was rendered by the Florida Supreme Court. The 2012 Enacted Plan was invalidated and the Legislature was given another opportunity to enact a proposed remedial plan. The Senate convened in October to redraw the Senate plan, but adjourned in November without adopting a plan. On December 30, the circuit court selected one of the Plaintiff's remedial plans and gave the Legislature three days to randomly renumber the districts to ensure that the longer four-year terms in office were not unfairly distributed to the majority party.

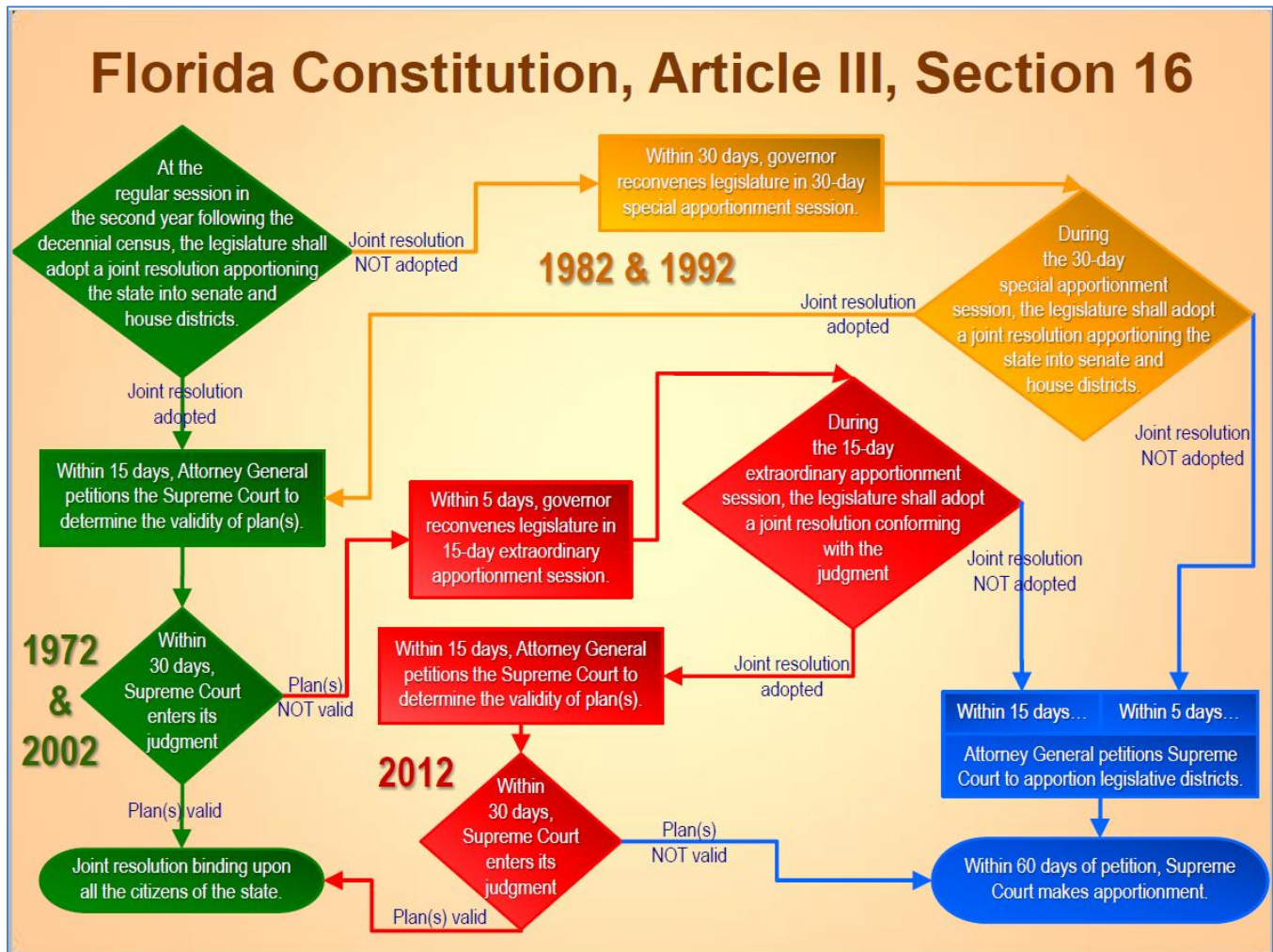
2016

On January 5, the Legislature complied with the order from the circuit court and randomly renumbered the new Senate districts.

The qualifying period was held between June 20 and 24 for state and federal offices. The primary election was held on August 30 and the general election was held on November 8, based upon the maps that were adopted in December 2015. The maps will be used in all state senatorial elections until the next decennial redistricting.

The Senate Reapportionment Committee developed the flow chart below demonstrating the redistricting procedures outlined in the State Constitution.²⁵

²⁵ The chart is available at <http://www.flsenate.gov/usercontent/session/redistricting/ReapportionmentProcess.pdf>. (last accessed Feb 14, 2017)



III. Effect of Proposed Changes:

CS/SB 352 provides clarity to courts and candidates when redistricting challenges are pending and an election is approaching. The bill provides which boundaries control when a challenge is unresolved and explains when a congressional candidate needs to requalify. Further, courts are encouraged to use specific procedures to draft remedial plans.

Subsection (1) – State Qualifying Periods when a Challenge is Pending

Under the bill, if a court challenge is pending when the qualifying period begins for a state or multicounty district office, then the qualifying period, primary, and general election must proceed using the boundaries of the districts that are in place 71 days before the primary election. This has the effect of assuring candidates and supervisors of elections that the legislative boundaries in place at qualifying time will be used in the primary and general elections of that year. This further allows supervisors to “geo-code” voters into the proper voting districts based on their addresses of records, and notify them of the location of their polling sites.

If a court revises the district boundaries to senatorial, representative, or congressional districts after the 71st day before a primary election, the revised district boundaries will not govern the immediate election, but will control beginning with the next primary and general elections held in the next even-numbered year. This is similar to what occurred earlier during the reapportionment litigation involving the validity of the congressional maps. In 2014, the Circuit Court of Leon County required that the 2014 congressional elections proceed under the 2012 remedial map, even though two of the 27 congressional districts had been declared invalid. The court concluded that there was not enough time to create new maps to correct the deficiencies in the remedial maps and have the elections proceed at the originally scheduled time.²⁶

Subsection (2) - Qualifying for Congressional Districts

This subsection of the bill addresses qualifying for congressional districts. As discussed above, congressional candidates currently qualify 120 to 116 days before the primary election in a non-apportionment year and 71-67 days before the primary in an apportionment year. If a court orders district boundary revisions after the qualifying period ends 116 days before the primary, then congressional candidates must requalify during the later qualifying period of 71-67 days before the primary, in accordance with the districts in place on the 71st day before the primary.

Subsection (3) – Guidelines to a Court Drafting a Remedial Map

This subsection of the bill encourages a court to follow specific procedures if it is required to draft a remedial redistricting plan after a successful challenge of senatorial, representative, or congressional districts. These items are encouraged to maintain public oversight of the court's process. These are essentially the same items that the Court imposed on the Legislature during the last redistricting process. The Court also required members of the Legislature and its staff to submit to depositions and give testimony at trial. However, the bill stops short of encouraging judges to submit to similar examinations of their intent.

The court is encouraged to:

- Conduct public hearings involving proposed district configurations;
- Record and maintain minutes of meetings on the plan if the meetings are closed to the public;
- Provide a method for the public to submit and comment on additional maps;
- Offer the public an opportunity to review and comment on any map before a plan is finalized; and
- Maintain all e-mails and documents related to the creation of the remedial plan.

Subsection (4) – Clarification that Constitutional Apportionment Language is Precedent

This subsection of the bill declares that it does not supersede or impair the apportionment prescriptions of the State Constitution.

The bill takes effect upon becoming a law.

²⁶ *Romo v. Detzner*, (Trial Court Order) Nos. 2012-CA-00412 & 2012-CA-00490, Order Approving Remedial Redistricting Plan at 4 (Fla. 2d Jud. Cir. Ct. Aug. 22, 2014).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Subsection (1) of the bill establishes which district boundaries will control when a challenge is unresolved 71 days before a primary election. By providing default boundaries, the Legislature reduces the remedies that a court may choose from when trying to develop a response to an invalid plan. How a court would resolve a constitutional challenge to the provision of a plan by default is unclear, and the resolution of the challenge may depend upon the specific facts and circumstances surrounding the challenged plan.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No agency bill analysis has been provided at this time and it would be difficult to predict how the bill would affect the costs of redistricting litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 97.029, 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 Ethics and Elections on February 21, 2017:

The committee substitute differs from the original bill in that it deletes subsection (1) in its entirety, which mandated that a court expedite and prioritize the hearing and resolution of pending redistricting cases.

- B. **Amendments:**

None.

By the Committee on Ethics and Elections; and Senator Hutson

582-01940-17

2017352c1

1 A bill to be entitled
 2 An act relating to legislative redistricting and
 3 congressional reapportionment; creating s. 97.029,
 4 F.S.; providing that candidate qualifying, nomination,
 5 and election for certain offices must proceed using
 6 current district boundaries if revisions to districts
 7 subject to a court challenge are not made as of a
 8 certain date; specifying public oversight procedures
 9 that a court is encouraged to follow when drafting a
 10 remedial redistricting plan; providing for
 11 construction; providing an effective date.

12

13 WHEREAS, uncertainty regarding the boundaries of state
 14 legislative and congressional districts can create confusion
 15 among candidates and voters, with candidates uncertain as to
 16 which districts they should run in and how they should allocate
 17 finite campaign resources, and voters uncertain as to which
 18 district they reside in or the polling place to which they are
 19 assigned, and

20 WHEREAS, with each redistricting of state legislative
 21 districts and each reapportionment of congressional districts,
 22 supervisors of elections are tasked with the timely and
 23 intricate process of redrawing precinct lines and reassigning
 24 voters to new polling places, and

25 WHEREAS, finalizing the boundaries of state legislative and
 26 congressional districts shortly before an election hampers the
 27 ability of supervisors of elections and other election officials
 28 to effectively administer an election, and

29 WHEREAS, in recent rulings relating to challenges to

Page 1 of 3

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

582-01940-17

2017352c1

30 district boundaries, courts have recognized the legal and
 31 logistical difficulties associated with implementing revised
 32 district boundaries within an abbreviated timeframe, as well as
 33 the financial cost of holding a special election to implement
 34 new districts, NOW, THEREFORE,
 35

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

37

38 Section 1. Section 97.029, Florida Statutes, is created to
 39 read:

40 97.029 Challenges to state legislative or congressional
 41 districts.-

42 (1) If a challenge to the validity of boundaries of
 43 senatorial, representative, or congressional districts of the
 44 state is still pending in court when the qualifying period for
 45 persons seeking nomination or election to state or multicounty
 46 district office, other than the office of state attorney or the
 47 public defender, begins pursuant to s. 99.061(1), candidate
 48 qualifying, nomination, and election for the offices in the plan
 49 subject to the challenge must proceed using the districts that
 50 are in place on the 71st day before the primary election. If a
 51 court orders revisions to senatorial, representative, or
 52 congressional districts on or after the 71st day before the
 53 primary election, the revised districts shall govern beginning
 54 with the subsequent primary and general elections in the next
 55 even-numbered year.

56 (2) If a court orders revisions to congressional districts
 57 after the qualifying period for persons seeking nomination or
 58 election to federal office has concluded at noon of the 116th

Page 2 of 3

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

582-01940-17

2017352c1

59 day before the primary election, candidates for the United
60 States House of Representatives must requalify in accordance
61 with the revised congressional districts during the qualifying
62 period from noon on the 71st day before the primary election to
63 noon on the 67th day before the primary election.

64 (3) In the event that a court drafts a remedial
65 redistricting plan as a result of a successful challenge to the
66 validity of boundaries of senatorial, representative, or
67 congressional districts, the court is encouraged to use the
68 following procedures in drafting the remedial plan in order to
69 maintain public oversight:

70 (a) Conduct public hearings on proposed configurations of
71 district boundaries in the remedial plan.

72 (b) Record and maintain minutes of meetings on the remedial
73 plan which are closed to the public.

74 (c) Provide a mechanism for the public to submit and
75 comment on alternative maps.

76 (d) Offer an opportunity for the public to review and
77 comment on any proposed map before the remedial plan is
78 finalized.

79 (e) Maintain all e-mails and documents related to the
80 drafting of the remedial plan.

81 (4) This section does not supersede or impair the
82 procedures governing the judicial review of apportionment as set
83 forth in s. 16, Art. III of the State Constitution.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/2017

Meeting Date

352

Bill Number (if applicable)

Topic Redistricting

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title legislative Advocate

Address 540 Beverly Court
Street

Phone 772 204 1792

Tallahassee FL 32301
City State Zip

Email lwvadvocacy@gmail.com

Speaking: For Against Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/17
Meeting Date

352
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ben Wilcox

Job Title _____

Address 1719 Old Fort Dr.
Street
Tallahassee FL 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 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
APPEARANCE RECORD

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

3/9/2017
Meeting Date

352
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 6119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7004

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Peer Review Panels/Department of Health

DATE: March 8, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Rossitto-Van Winkle	Stovall		HP Submitted as Committee Bill
1.	Kim	Ferrin	GO	Favorable
2.	Rossitto-Van Winkle	Phelps	RC	Favorable

I. Summary:

SB 7004 continues existing public records and public meetings exemptions for:

- Biomedical research grant applications provided to a peer review panel for the James and Esther King Biomedical Research Program (King Program) and the William G. “Bill” Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program);
- Records generated by a peer review panel relating to the review of a biomedical research grant application; and
- That portion of a meeting of a peer review panel in which biomedical research grant applications are discussed.¹

The bill removes the scheduled repeal and provides an effective date of October 1, 2017.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.² The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.³

¹ Sections 215.56021 and 381.92201, F.S.

² FLA. CONST. art. I, s. 24(a).

³ FLA. CONST. art. I, s. 24(b).

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

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

Open Government Sunset Review Act

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

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

⁴ Chapter 119, F.S.

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

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

Biomedical Research Programs

The Department of Health (department) administers two grant funding programs that fund research on cancer and tobacco-related diseases in the state: the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).

The Legislature created the Florida Biomedical Research Program in 1999 within the department.²⁰ The Florida Biomedical Research Program was renamed the James and Esther King Biomedical Research Program during Special Session B of the 2003 Legislature.²¹ The purpose of the King Program "is to provide an annual and perpetual source of funding in order to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease."²²

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

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

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

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Chapter 99-167, s. 2, Laws of Fla.

²¹ Chapter 2003-414, Laws of Fla..

²² Section 215.5602(1), F.S.

The 2006 Legislature created the Bankhead-Coley Program within the department.²³ The purpose of the program is “to advance progress toward cures for cancer through grants awarded” for cancer research.²⁴

The King Program and the Bankhead-Coley Program offer competitive grants to researchers throughout Florida. Grant applications from any university or established research institute in Florida are considered for biomedical research funding.²⁵ All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.²⁶

The department uses a multi-step evaluation process²⁷ for making award determinations for all applications submitted in response to a Funding Opportunity, before making final recommendations to the State Surgeon General. Under the multi-step evaluation process, the department conducts an Administrative Review and Peer Review, and then in conjunction with the Biomedical Research Advisory Council (council) conducts a Programmatic Review to eliminate or manage any conflicts of interests.

The State Surgeon General, after consultation with the council, is authorized to award grants and fellowships on the basis of scientific merit²⁸ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

Biomedical Research Advisory Council and Peer Review Panel

The purpose of the council²⁹ is to “advise the State Surgeon General as to the direction and scope of the biomedical research program.”³⁰ The council is also required to consult with the State Surgeon General concerning grant awards under the King Program and the Bankhead-Coley Program.³¹

²³ Section 381.922, F.S.; Ch. 2006-182, Laws of Fla.

²⁴ Section 381.922(1), F.S.

²⁵ Sections 381.922(3)(a), and 215.5602(5)(b), F.S.

²⁶ *Id.*

²⁷ See Department of Health, James and Ester King Biomedical Research Program. *Funding Opportunity Announcement FY 2016-2017*, page 28, available at: <http://www.floridahealth.gov/provider-and-partner-resources/research/FINAL%20FY%2016-17%20King%20Program%20FOA.pdf> and Department of Health, Bankhead-Coley Cancer Research Program, *Funding Opportunity Announcement FY 2016-17*, page 27, available at: <http://www.floridahealth.gov/provider-and-partner-resources/research/FINAL%20FY%2016-17%20BC%20Program%20FOA.pdf> (Last visited on February 15, 2017).

²⁸ Section 215.5602(5)(b) and (6), F.S.; s. 381.922(3)(a) and (b), F.S.

²⁹ Section 215.5602(3), F.S.

³⁰ Section 215.5602(4), F.S.

³¹ Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the council concerning awarding grants for cancer research. Section 215.5602(11), F.S., expressly provides that the council must award grants for cancer research through the Bankhead-Coley Program.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel³² of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a “scientific”³³ priority score.³⁴ To eliminate conflicts of interest, peer reviewers come from outside the state of Florida. Reviewers are experts in their fields from universities, government agencies, and private industry who are matched according to application topic and area of expertise. The priority scores must be considered by the council in determining which proposals will be recommended for funding to the State Surgeon General.

Public Records and Public Meeting Exemptions for Peer Review Panel Activities

In 2012, the Legislature created exemptions from Florida’s public records and public meetings laws for research grant applications provided by the department to peer reviewers; records generated by the peer review panel (except final recommendations); and portions of meetings of a peer review panel in which applications for biomedical research grants under the King Program and the Bankhead-Coley Program are discussed.³⁵ In accordance with the OGSR, both exemptions sunset on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

The exemptions authorize the information that is held confidential and exempt to be disclosed with the express written consent of the individual, or the individual’s legally authorized representative, to whom the information pertains, or by court order upon showing good cause.

When enacting these exemptions, the Legislature found that the research grant applications under these programs contain information of such a confidential nature, including ideas and processes, that the disclosure of which could injure the affected researcher; and that maintaining confidentiality is paramount to scientific peer review and allows for a candid exchange between reviewers. The Legislature also found it a public necessity to close access to the peer review panel meetings where the grant applications were discussed and close access to the records generated at those meetings, to ensure that decisions were based on merit, without bias or undue influence.³⁶

OGSR of Open Meetings and Public Records Exemption Under Review

During the Interim, Senate and House of Representatives professional staff jointly sent a survey to the department regarding these public records exemptions in compliance with the OGSR Act. The department’s response was both detailed and informative about the grant and fellowship

³² Section 215.5602(6) and (7); s. 381.922(3)(b), F.S.

³³ The King Program requires a *scientific* priority score in s. 215.5602(6), F.S. The Bankhead-Coley Program requires a *priority* score in s. 381.922(3)(b), F.S.

³⁴ A Bridge Grant application is ranked solely by the priority score or percentile assigned to its qualifying federal proposal in an eligible federal review process.

³⁵ Sections 215.56021 and 381.92201, F.S.

³⁶ Chapter 2012-15, s 2., Laws of Fla.

application process for the King Program and Bankhead-Coley Program.³⁷ The department's vendors send the applications to qualified, individual peer reviewers to evaluate the merits of grant and fellowship applications. The vendors then consolidate the peer reviewers' scores and then submit them to the council. The council reviews the vendor's consolidated peer review panel reports and then meet to discuss the merits of the applications and make recommendations to the State Surgeon General.

Researchers have submitted 640 applications or proposals since March 23, 2012. The department has funded 87 of those projects.³⁸

The department recommends that the public records and meetings exemptions not be repealed, however, the department also states that only one section is necessary since they are identical.³⁹

III. Effect of Proposed Changes:

The bill reenacts and removes the scheduled repeal date of October 2, 2017, for the public records and public meeting exemptions in ss. 215.56021 and 381.92201, F.S., relating to the King Program and the Bankhead-Coley Program, respectively.

The public records exemptions apply to biomedical research grant applications provided to the peer review panel and any records generated by the peer review panel in reviewing the grant applications, except final recommendations. These records are confidential and exempt from s. 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The public meeting exemptions apply to portions of peer review panel meetings when grant applications are discussed and make them exempt from s. 286.011, F.S., and Article I, section 24(b) of the Florida Constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts existing public records and meeting exemptions pertaining to applications for biomedical research grants and meetings of the peer review panel under the King Program and the Bankhead-Coley. Therefore, a simple majority vote of the members present in each house of the Legislature is required for passage.

³⁷ *House Government Operations Subcommittee Senate Committee on Health Policy Open Government Sunset Review Questionnaire* completed by the Florida Department of Health and returned on August 10, 2016, on file with the Senate Committee on Governmental Oversight and Accountability.

³⁸ *Id.* at 5.

³⁹ *Id.* at 9.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Continued protection of research grant applications and peer review activities will help ensure integrity of the state-funded biomedical research grant program.

C. Government Sector Impact:

Continued protection of research grant applications and peer review activities will help ensure integrity of the state-funded biomedical research grant program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature passed these public records and meetings exemptions as a single, unnumbered section in Ch. 2012-15, Laws of Fla. The statement of public necessity, as well as the first subsection in Ch. 2012-15, Laws of Fla., clearly state that meetings and records exemptions apply to both research grant programs under s. 215.5602, F.S., (the King Program) and s. 381.922, F.S. (the Bankhead-Coley Program). Accordingly, Ch. 2012-15, Laws of Fla., also has only one sunset date.

The exemptions are published twice, however, in the Florida Statutes, and are co-located with each research program. The bill also includes both ss. 215.56021 and 381.9221, F.S., with individual sunset dates.

Section 119.15(6)(a), F.S., requires the Legislature consider the following questions during a sunset review:

- “Is the record or meeting protected by another exemption?” [and]
- “Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?”

Under normal circumstances after an OGSR, one of these exemptions might be repealed since both exemptions protect the same information. It appears as though removing one exemption would not open the peer review records or grant applications to public inspection, nor allow public access to the meetings.

Repealing either s. 215.56021 F.S., or 381.92201, F.S., however, may make it appear as though one grant program did not have a public meetings and records exemption. Subparagraph (1) of each exemption specifically provides that the meetings exemption applies to grants under ss. 215.5602 and 381.922, F.S. Subparagraphs (2) and (3), however, reference the peer review panels in subparagraph (1), but do not specifically state that the exemptions for meetings records and grant applications apply to grants under ss. 215.5602 and 381.922, F.S. If the Legislature repeals one exemption, a court could find that there was Legislative intent to remove application of the exemptions in subparagraphs (2) and (3) to the non-co-located grant program.

In addition, if one public records exemption is repealed, the “orphaned” grant program’s exemption would be codified in a completely different title and chapter of the Florida Statutes.⁴⁰ This may diminish the utility of the exemptions only because the exemptions would be difficult to find.

If the Legislature wishes to repeal or consolidate these exemptions, it may also wish to consider amending the cross-references to clarify that the exemptions apply to both grant programs.

VIII. Statutes Affected:

This bill substantially amends the following sections of Florida Statutes: 215.56021 and 381.92201.

IX. Additional Information:

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

None.

B. **Amendments:**

None.

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

⁴⁰ The King Program is codified in Ch. 215, Title XIV, Tax and Finance, and the Bankhead-Coley Program is located in Ch. 381, F.S., in Title XXIX, Public Health.

By the Committee on Health Policy

588-00919-17

20177004__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending ss. 215.56021 and
 4 381.92201, F.S., relating to exemptions from public
 5 records and public meetings requirements for specified
 6 portions of meetings of certain peer review panels
 7 appointed by the Department of Health, for specified
 8 records generated by such peer review panels, and for
 9 research grant applications provided to such peer
 10 review panels; removing the scheduled repeal of the
 11 exemptions; providing an effective date.

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

15 Section 1. Section 215.56021, Florida Statutes, is amended
 16 to read:

17 215.56021 Exemptions from public records and public
 18 meetings requirements; peer review panels.—

19 (1) That portion of a meeting of a peer review panel in
 20 which applications for biomedical research grants under s.
 21 215.5602 or s. 381.922 are discussed is exempt from s. 286.011
 22 and s. 24(b), Art. I of the State Constitution.

23 (2) Any records generated by the peer review panel relating
 24 to review of applications for biomedical research grants, except
 25 final recommendations, are confidential and exempt from s.
 26 119.07(1) and s. 24(a), Art. I of the State Constitution.

27 (3) Research grant applications provided to the peer review
 28 panel are confidential and exempt from s. 119.07(1) and s.
 29 24(a), Art. I of the State Constitution.

30 (4) Information that which is held confidential and exempt
 31 under this section may be disclosed with the express written
 32 consent of the individual to whom the information pertains or

588-00919-17

20177004__

33 the individual's legally authorized representative, or by court
 34 order upon showing good cause.

35 ~~(5) Subsections (1), (2), (3), and (4) are subject to the~~
 36 ~~Open Government Sunset Review Act in accordance with s. 119.15~~
 37 ~~and shall stand repealed on October 2, 2017, unless reviewed and~~
 38 ~~saved from repeal through reenactment by the Legislature.~~

39 Section 2. Section 381.92201, Florida Statutes, is amended
 40 to read:

41 381.92201 Exemptions from public records and public
 42 meetings requirements; peer review panels.—

43 (1) That portion of a meeting of a peer review panel in
 44 which applications for biomedical research grants under s.
 45 215.5602 or s. 381.922 are discussed is exempt from s. 286.011
 46 and s. 24(b), Art. I of the State Constitution.

47 (2) Any records generated by the peer review panel relating
 48 to review of applications for biomedical research grants, except
 49 final recommendations, are confidential and exempt from s.
 50 119.07(1) and s. 24(a), Art. I of the State Constitution.

51 (3) Research grant applications provided to the peer review
 52 panel are confidential and exempt from s. 119.07(1) and s.
 53 24(a), Art. I of the State Constitution.

54 (4) Information that which is held confidential and exempt
 55 under this section may be disclosed with the express written
 56 consent of the individual to whom the information pertains or
 57 the individual's legally authorized representative, or by court
 58 order upon showing good cause.

59 ~~(5) Subsections (1), (2), (3), and (4) are subject to the~~
 60 ~~Open Government Sunset Review Act in accordance with s. 119.15~~
 61 ~~and shall stand repealed on October 2, 2017, unless reviewed and~~

588-00919-17

20177004__

62 ~~saved from repeal through reenactment by the Legislature.~~

63 Section 3. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/2017

Meeting Date

7004

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

City _____ State _____ Zip _____

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 3/9/2017 10:04:57 AM
Ends: 3/9/2017 10:52:35 AM Length: 00:47:39

10:04:55 AM Recording Paused
10:06:10 AM Recording Resumed
10:06:13 AM Meeting called to order by Chair Benacquisto
10:07:14 AM Roll call by Administrative Assistant Cyndi Futch
10:07:30 AM Quorum present
10:07:41 AM Excused absence from Senator Book
10:07:49 AM CS/SB 352
10:07:50 AM Introduction of CS/SB 352 by Chair Benacquisto
10:08:04 AM Senator Hutson explains CS/SB 352
10:08:19 AM Comments from Chair Benacquisto
10:08:32 AM Question from Vice Chair Thurston
10:08:41 AM Response from Senator Hutson
10:09:28 AM Comments from Chair Benacquisto
10:09:33 AM Speaker Kelly Quintero of the League of Women Voters of Florida, in opposition
10:10:48 AM Comments from Chair Benacquisto
10:10:50 AM Speaker Ben Wilcox on behalf of Common Cause Florida, in opposition
10:11:48 AM Comments from Chair Benacquisto
10:11:51 AM Speaker Brian Pitts on behalf of Justice-2-Jesus
10:16:46 AM Comments from Chair Benacquisto
10:16:53 AM Closure of CS/SB 352 by Senator Hutson
10:17:18 AM Question from Senator Braynon
10:17:20 AM Response from Chair Benacquisto
10:17:23 AM Roll call by Administrative Assistant Cyndi Futch
10:17:47 AM CS/SB 352 reports favorably
10:18:20 AM SB 7004
10:18:33 AM Introduction of SB 7004 by Chair Benacquisto
10:18:45 AM Health Policy Committee staff attorney Tari Rossitto-Van Winkle explains SB 7004
10:19:26 AM Comments from Chair Benacquisto
10:19:51 AM Speaker Brian Pitts, Justice-2-Jesus
10:22:11 AM Comments from Chair Benacquisto
10:23:17 AM Ms. Rossitto-Van Winkle waives closure of SB 7004
10:23:23 AM Roll call by Administrative Assistant Cyndi Futch
10:23:33 AM SB 7004 reports favorably
10:23:45 AM CS/SB 334
10:23:52 AM Introduction of CS/SB 334 by Chair Benacquisto
10:24:02 AM Senator Seube explains CS/SB 334
10:24:18 AM Comments from Chair Benacquisto
10:24:22 AM Question from Senator Latvala
10:24:38 AM Response from Senator Steube
10:25:10 AM Additional question by Senator Latvala
10:25:17 AM Response by Senator Steube
10:25:58 AM Follow up question by Senator Latvala
10:26:06 AM Response by Senator Steube
10:26:55 AM Additional comments and questions from Senator Latvala
10:27:05 AM Responses from Senator Steube
10:27:40 AM Comments from Chair Benacquisto
10:27:47 AM Question from Senator Montford
10:27:55 AM Response by Senator Steube
10:29:04 AM Comments from Chair Benacquisto
10:29:10 AM Late filed Amendment Barcode No. 398962 is introduced by Chair Benacquisto
10:29:32 AM Senator Lee explains Amendment Barcode No. 398962
10:31:40 AM Comments by Chair Benacquisto

10:31:59 AM Senator Steube comments on Amendment Barcode No. 398962
10:32:14 AM Amendment Barcode No. 398962 is adopted, without objection
10:32:28 AM Comments by Chair Benacquisto
10:32:34 AM Speaker Tim Nungesser of the National Federation of Independent Business, in opposition
10:33:35 AM Comments from Chair Benacquisto and recognizes Senator Book
10:33:39 AM Speaker Andrew Bolin of Florida Justice Reform Institute, in opposition
10:35:56 AM Comments from Chair Benacquisto
10:36:55 AM Speaker Samantha Padgett of the Florida Retail Federation, in opposition
10:37:24 AM Comments from Chair Benacquisto
10:38:20 AM Speaker Bob O'Malley of CSX Transportation waives in opposition
10:38:21 AM Comments from Chair Benacquisto
10:38:36 AM Speaker Gary Guzzo of the Institute for Legal Reform, in opposition
10:39:05 AM Comments from Chair Benacquisto
10:40:12 AM Speaker Brewster Bevis of the Associated Industries of Florida, in opposition
10:40:37 AM Comments from Chair Benacquisto
10:41:35 AM Question from Senator Flores
10:41:46 AM Response from Mr. Bevis
10:42:51 AM Comments by Chair Benacquisto
10:43:04 AM Speaker Brian Pitts, of Trustee
10:44:53 AM Comments from Chair Benacquisto
10:45:57 AM Response from Mr. Pitts
10:46:12 AM Comments from Chair Benacquisto
10:46:15 AM Speaker Jimmy Gustafson of the Florida Justice Association, in support
10:50:22 AM Comments from Chair Benacquisto
10:50:30 AM Logan Mc Faddin of the Property Casualty Insurer Association of America, waives in opposition
10:50:33 AM Gerald Wester of the American Insurance Association, waives in opposition
10:50:41 AM Adam Basford of the Florida Farm Bureau, waives in opposition
10:50:47 AM Speaker Bob Harris of the Panhandle Area Education Consortium
10:52:06 AM Mark Delagal of the Florida Chamber of Commerce, waives in opposition
10:52:07 AM Comments from Chair Benacquisto
10:52:15 AM Senator Bradley moves to temporarily postpone CS/SB 334, without objection
10:52:24 AM CS/SB 334 is temporarily postponed
10:52:28 AM Senator Flores moves for adjournment
10:52:30 AM Meeting is adjourned