

Tab 1	SB 88 by Stewart (CO-INTRODUCERS) Book, Torres, Gibson ; (Compare to H 00111) Child Care Facilities
Tab 2	CS/CS/SB 124 by JU, CF, Bean ; (Similar to CS/H 00185) Custody of Minor Children by Extended Family
Tab 3	CS/SB 128 by GO, Wright ; (Identical to H 00479) Public Records/Judicial Assistants
Tab 4	SB 294 by Wright (CO-INTRODUCERS) Baxley ; (Identical to H 00167) Crimes Against Veterans
Tab 5	CS/SB 7010 by GO, MS ; (Similar to H 07027) OGSR/ Servicemembers and the Spouses and Dependents of Servicemembers
Tab 6	SB 248 by Hooper ; (Identical to H 00063) Public Records/County Attorneys and Assistant County Attorneys
Tab 7	CS/SB 476 by IT, Hooper ; (Similar to CS/H 00307) Law Enforcement Vehicles
Tab 8	SB 886 by Powell ; (Similar to CS/H 00567) Errors in Deeds
Tab 9	SM 978 by Pizzo (CO-INTRODUCERS) Rodriguez ; (Identical to H 00765) Juneteenth Independence Day
Tab 10	SB 7006 by EE ; (Identical to H 07009) Penalties for Violations of the Constitutional Prohibition Against Abuse of Public Position
Tab 11	SJR 142 by Brandes (CO-INTRODUCERS) Mayfield, Hooper ; (Similar to H 00301) Abolishing the Constitution Revision Commission

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Wednesday, January 29, 2020
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 88 Stewart (Compare H 111, H 679, S 1548)	Child Care Facilities; Citing this act at the "Child Safety Alarm Act"; requiring that, by a specified date, vehicles used by child care facilities and large family child care homes to transport children be equipped with a reliable alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle; requiring the Department of Children and Families to adopt by rule minimum safety standards for such systems and to maintain a list of approved alarm manufacturers and alarm systems, etc. CF 11/05/2019 Favorable IS 01/21/2020 Favorable RC 01/29/2020 Favorable	Favorable Yeas 16 Nays 1
2	CS/CS/SB 124 Judiciary / Children, Families, and Elder Affairs / Bean (Similar CS/H 185)	Custody of Minor Children by Extended Family; Revising the purposes of ch. 751, F.S.; revising the requirements for individuals seeking concurrent custody; allowing any other provisions related to the best interest of the child to be considered in a petition for temporary or concurrent custody; authorizing courts to include provisions requested in petitions for temporary or concurrent custody which relate to the best interest of the child, etc. CF 11/05/2019 Fav/CS JU 12/10/2019 Fav/CS RC 01/29/2020 Favorable	Favorable Yeas 15 Nays 0
3	CS/SB 128 Governmental Oversight and Accountability / Wright (Identical H 479)	Public Records/Judicial Assistants; Providing an exemption from public records requirements for certain identifying and location information of current and former judicial assistants and their spouses and children; providing for retroactive application of the exemption; providing a statement of public necessity, etc. JU 09/17/2019 Favorable GO 10/14/2019 Fav/CS RC 01/29/2020 Favorable	Favorable Yeas 13 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, January 29, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 294 Wright (Identical H 167)	Crimes Against Veterans; Citing this act as the "Florida Veterans Protection Act"; providing an enhanced sentence for any person who commits aggravated white collar crimes against a certain number of veterans by obtaining or attempting to obtain a specified amount of money; providing criminal penalties, etc. MS 11/13/2019 Favorable CJ 01/14/2020 Favorable RC 01/29/2020 Favorable	Favorable Yeas 16 Nays 0
5	CS/SB 7010 Governmental Oversight and Accountability / Military and Veterans Affairs and Space (Similar H 7027)	OGSR/ Servicemembers and the Spouses and Dependents of Servicemembers; Amending a provision which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 01/13/2020 Fav/CS RC 01/29/2020 Temporarily Postponed	Temporarily Postponed
6	SB 248 Hooper (Identical H 63)	Public Records/County Attorneys and Assistant County Attorneys; Providing an exemption from public records requirements for the personal identifying and location information of current and former county attorneys and assistant county attorneys and the names and personal identifying and location information of the spouses and children of such attorneys; providing a statement of public necessity, etc. JU 11/05/2019 Favorable GO 12/09/2019 Favorable RC 01/29/2020 Favorable	Favorable Yeas 12 Nays 3
7	CS/SB 476 Innovation, Industry, and Technology / Hooper (Similar CS/H 307)	Law Enforcement Vehicles; Providing that condominium, cooperative, and homeowners' associations, respectively, may not prohibit a law enforcement officer from parking his or her assigned law enforcement vehicle in certain areas, etc. IT 12/09/2019 Fav/CS GO 01/13/2020 Favorable RC 01/29/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, January 29, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 886 Powell (Similar CS/H 567)	Errors in Deeds; Providing that a deed containing a scrivener's error conveys title as if there had been no such error if certain requirements are met; providing a form for a curative notice; authorizing the clerks of the circuit court to accept and record curative notices; providing for the operation of a curative notice, etc. JU 12/10/2019 Favorable CM 01/14/2020 Favorable RC 01/29/2020 Favorable	Favorable Yeas 16 Nays 0
9	SM 978 Pizzo (Identical HM 765)	Juneteenth Independence Day; Urging Congress to recognize June 19, 2020, as "Juneteenth Independence Day", etc. GO 01/13/2020 Favorable JU 01/21/2020 Favorable RC 01/29/2020 Favorable	Favorable Yeas 17 Nays 0
10	SB 7006 Ethics and Elections (Identical H 7009)	Penalties for Violations of the Constitutional Prohibition Against Abuse of Public Position; Reenacting a provision relating to penalties, etc. RC 01/29/2020 Favorable	Favorable Yeas 17 Nays 0
11	SJR 142 Brandes (Similar HJR 301, Compare H 303)	Abolishing the Constitution Revision Commission; Proposing amendments to the State Constitution to abolish the Constitution Revision Commission, etc. JU 09/17/2019 Favorable GO 10/14/2019 Favorable RC 01/29/2020 Favorable	Favorable Yeas 16 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 88

INTRODUCER: Senators Stewart and Book

SUBJECT: Child Care Facilities

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	Favorable
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 88 creates the “Child Safety Alarm Act” and requires that after January 1, 2021, vehicles used by child care facilities and large child care homes to transport children must be equipped with an approved alarm system that prompts the driver to inspect the vehicle for the presence of children before leaving the area.

The bill requires the Department of Children and Families (DCF) to adopt by rule minimum safety standards for reliable alarm systems and maintain a list of alarm manufacturers and alarm systems that are approved to be installed in vehicles.

The bill is expected to have a significant fiscal impact on private entities and has an effective date of October 1, 2020.

II. Present Situation:

Death by hyperthermia or vehicular heat stroke deaths have become more prevalent since federal law required that children ride in the backseat due to the danger of front passenger seat airbags.¹ The national average number of these deaths is 38 per year.² Fifty-four percent of hyperthermia deaths involve children under the age of one.³ Between 1998 and 2019, Florida has the second highest number of child deaths from vehicular heat stroke.⁴ To date, 50 children have fallen

¹ See Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car is a Horrifying Mistake. Is it a Crime?*, THE WASHINGTON POST, Mar. 8, 2009, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549.html> (last visited January 15, 2020).

² See Kids and Cars.org, Children Vehicular Heatstroke Deaths by Year, available at: <https://www.kidsandcars.org/how-kids-get-hurt/heat-stroke/> (last visited January 15, 2020).

³ See Kids and Cars.org, Fact Sheet, available at: <http://www.kidsandcars.org/wp-content/uploads/2018/10/Heatstroke-fact-sheet-2018-1.pdf> (last visited January 15, 2020).

⁴ National Safety Council, Hot Car Deaths, available at: <https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/hotcars/> (last visited January 15, 2020).

victim to vehicular heat stroke deaths nationwide in 2019 alone.⁵ 5 of the 50 deaths in 2019 have occurred in Florida.⁶

Technology Based Prevention

Automobile Manufacturers

The auto industry has been aware of the problem for years. General Motors (GM) tried over ten years ago to find a solution, but found the results were unreliable. At the 2002 New York Auto Show, GM unveiled a system that would be able to detect the heartbeat of a child left in a car and then measure the vehicle's temperature. If it was becoming dangerously hot, it would sound the horn to alert a parent or passersby. GM later reported that the system was abandoned after it was found "not reliable enough to put into production."⁷

Ford was among the other automakers who also expressed interest in developing such a system, but a decade later, the technology isn't available on any automobile as a factory standard feature or option. Auto safety groups have called for manufacturers to do more, but for several reasons including cost, technology, liability and privacy issues, there is still no foolproof way of preventing overheating deaths or warning of the possibility before they happen.⁸

In 2016, GM announced it would introduce a new safety system to remind drivers to check for children in the rear seats, and that it could eventually develop features to detect forgotten children.⁹ The National Highway Traffic Safety Administration (NHTSA) said it has no plans to require automakers to add in-vehicle technology that would alert those who leave young children behind in hot cars.¹⁰

Aftermarket Systems

There are numerous aftermarket warning systems that alert a parent to a child left in a safety seat, shopping cart, or elsewhere, but federal regulators have questioned their efficacy.

A preliminary assessment performed on technology devices aimed at helping to prevent a child from being unintentionally left in a hot car concluded that they are not reliable and limited in their effectiveness, according to a study by NHTSA and the Children's Hospital of Philadelphia.¹¹

⁵See Kids and Cars, 2019 Child Hot Car Deaths, available at: <https://www.kidsandcars.org/2019-child-hot-car-deaths/> (last visited January 15, 2020).

⁶ *Id.*

⁷ Paul Eisenstein, *Death in Hot Cars: Why Can't the Automakers Prevent the Danger?* July 11, 2014, available at: <http://www.nbcnews.com/storyline/hot-cars-and-kids/death-hot-cars-why-cant-automakers-prevent-danger-n152911> (last visited January 15, 2020).

⁸ *Id.*

⁹ David Shepardson, *GM has a way to help prevent drivers from forgetting children in the back seat*, Business Insider, January 12, 2016, available at: <https://www.businessinsider.com/r-gm-unveils-technology-to-help-avoid-child-heatstroke-deaths-2016-1> (last visited January 15, 2020).

¹⁰ *Id.*

¹¹ Consumer Reports, *Heatstroke Death a Risk to Children in Hot Cars* (July 24, 2019), available at <https://www.consumerreports.org/cro/news/2012/08/warning-systems-to-detect-children-left-in-hot-cars-found-unreliable-study-finds/index.htm>. (last visited January 15, 2020).

The study found several limitations in these products after conducting tests, including inconsistencies in arming sensitivity, variations in warning signal distance, potential interference from other electronic devices, children inadvertently disarming the device by slumping over or sleeping out of position, and limitations in the products' susceptibility to misuse or other common scenarios, such as a beverage spill. Many of the products tested require extensive setup work by caregivers and parents, potentially giving them a false sense of security. Moreover, since the devices are restraint-based, they wouldn't address the 20 to 40 percent of children who are killed in hot cars when they enter a vehicle without adult permission.¹²

Licensing Standards for Child Care Facilities and Large Family Child Care Homes

The DCF establishes licensing standards that each licensed child care facility in the state must meet.¹³ A child care facility is defined in Florida law as “any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.”¹⁴

A large family child care home is defined as an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation.¹⁵

The DCF currently oversees 6,016 licensed child care entities including child care facilities, large family child care homes and family day care homes.¹⁶ In addition, there are homes that are only registered by the agency, facilities that are exempt from licensure due to a religious affiliation,¹⁷ and homes currently licensed by five counties in the state.¹⁸ Of these homes, 1,979 child care facilities and large family child care homes regulated by the DCF reported that they transport children as of August 2019.¹⁹

Statutory licensing standards for child care facilities are extensive and reference transportation and vehicles, including the requirement that minimum standards include accountability for children being transported.²⁰ The Florida Administrative Code provides requirements for licensed child care facilities and large family child care homes to follow in relation to vehicles

¹² Ryan Jaslow, *Gov't study: Devices that alert parents they left a child in a car deemed unreliable*, CBS News, July 31, 2012, available at <https://www.cbsnews.com/news/govt-study-devices-that-alert-parents-they-left-a-child-in-car-deemed-unreliable/> (last visited January 15, 2020).

¹³ Section 402.305, F.S.

¹⁴ Section 402.302(2), F.S.

¹⁵ Section 402.302(11), F.S.

¹⁶ Florida Department of Children and Families, *DCF Quick Facts*, (Quarter 2, Fiscal Year 2018-2019), available at: <http://www.dcf.state.fl.us/general-information/quick-facts/cc> (last visited January 15, 2020).

¹⁷ Section 402.316, F.S.

¹⁸ Section 402.306, F.S. Those five counties are Broward, Hillsborough, Palm Beach, Pinellas and Sarasota.

¹⁹ Florida Department of Children and Families, *Agency Analysis of 2020 Senate Bill 88* (August 16, 2019). On file with the Senate Committee on Children, Families, and Elder Affairs

²⁰ Section 402.305, F.S

that are owned, operated, or regularly used by the facility or home, as well as vehicles that provide transportation through a contract or agreement with an outside entity.²¹

Providers are required to maintain a driver's log for all children being transported. This log must include the child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle. Upon arrival at the destination, the driver of the vehicle must mark each child off the log as the child departs the vehicle, conduct a physical inspection and visual sweep of the vehicle, and sign, date, and record the driver's log immediately to verify all children were accounted for and that the sweep was conducted. Upon arrival at the destination, a second staff member must also conduct a physical inspection and visual sweep of the vehicle and sign, date, and record the driver's log to verify all children were accounted for and that the driver's log is complete.²²

Current standards for child care facilities and large family child care homes do not address alarm systems in vehicles, however, Palm Beach County and Broward County have requirements similar to the one proposed in the bill.²³

III. Effect of Proposed Changes:

Section 1 provides a short title for the bill — the “Child Safety Alarm Act.”

Section 2 amends s. 402.305, F.S., relating to licensing standards for child care facilities, to require that on or after January 1, 2020, vehicles used by child care facilities and large family child care homes to transport children must have an approved alarm system that prompts the driver to inspect the vehicle for the presence of children before leaving the area.

The bill requires the DCF to adopt by rule minimum safety standards for reliable alarm systems and maintain a list of alarm manufacturers and alarm systems that are approved to be installed in vehicles. The bill also modifies existing minimum safety standards in statute pertaining to transportation for child care facilities. Under the bill, these standards must include:

- The required use of seat belts in all vehicles used by child care facilities and large family child care homes to transport children;
- Annual inspections for all such vehicles;
- Limitations on the number of children that may be transported within each vehicle;
- Procedures to ensure that children are not inadvertently left in vehicles when transported by the facility; and
- Relevant accountability measures for each facility.

The bill also clarifies that child care facilities and large family child care homes are not responsible for the safe transport of children when they are being transported by a parent or guardian.

Section 3 provides an effective date of October 1, 2020.

²¹ See 65C-22.001(6) and 65C-20.13(8), F.A.C.

²² *Id.*

²³ Florida Department of Children and Families, Agency Analysis of 2020 Senate Bill 88 (August 16, 2019). On file with the Senate Committee on Children, Families, and Elder Affairs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DCF reported approximately 1,979 child care providers currently offer a transportation service. These programs would be required to purchase, at a minimum, one of the alarm systems required by this bill.²⁴

The fiscal impact on individual providers will vary based on unit cost, installation costs, and possible future warranty fees. As of 2019, the DCF anticipates the unit costs to vary from \$130 to \$156. Installation costs may range from \$100 to \$450 depending on the unit and installer.²⁵

C. Government Sector Impact:

The DCF advised there is a workload increase in establishing and maintaining a list of approved alarm manufacturers. In addition, there is a cost of approximately \$6,500 for rule promulgation to adopt minimum safety standards for the alarm systems. However,

²⁴ Florida Department of Children and Families, Agency Analysis of 2020 Senate Bill 88 (August 16, 2019). On file with the Senate Committee on Children, Families, and Elder Affairs.

²⁵ *Id.*

according to the DCF this minimal fiscal impact can be absorbed through existing resources.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DCF notes that the language “safe transport” at line 44 regarding child care facilities not bearing responsibility for children being transported by parents or guardians may require further clarification, as it is unclear what specific duties are imposed on providers and when they would apply to a particular child care facility or large family home.²⁷

VIII. Statutes Affected:

This bill substantially amends section 402.305 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²⁶ *Id.*

²⁷ *Id.*

By Senator Stewart

13-00035-20

202088__

A bill to be entitled

An act relating to child care facilities; providing a short title; amending s. 402.305, F.S.; requiring that, by a specified date, vehicles used by child care facilities and large family child care homes to transport children be equipped with a reliable alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle; requiring the Department of Children and Families to adopt by rule minimum safety standards for such systems and to maintain a list of approved alarm manufacturers and alarm systems; providing an effective date.

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

Section 1. This act may be cited as the "Child Safety Alarm Act."

Section 2. Subsection (10) of section 402.305, Florida Statutes, is amended to read:

402.305 Licensing standards; child care facilities.—

(10) TRANSPORTATION SAFETY.—

(a) Minimum standards shall include all of the following:

1. Requirements for child restraints or seat belts in vehicles used by child care facilities and large family child care homes to transport children.

2. Requirements for annual inspections of ~~such~~ the vehicles.

3. Limitations on the number of children ~~that may be~~ transported in ~~such~~ the vehicles.

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

13-00035-20

202088__

4. Procedures to ensure that ~~avoid leaving~~ children are not inadvertently left in vehicles when transported by the facility or home, and that systems are in place to ensure accountability for children transported by such facilities and homes ~~the child care facility~~.

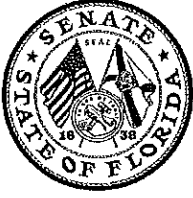
(b) By January 1, 2021, all vehicles used by child care facilities and large family child care homes to transport children must be equipped with a reliable alarm system approved by the department which prompts the driver to inspect the vehicle for children before exiting the vehicle. The department shall adopt by rule minimum safety standards for such systems and shall maintain a list of approved alarm manufacturers and alarm systems that meet or exceed those standards.

(c) A child care facility or large family child care home is not responsible for the safe transport of children when they are being transported by a parent or guardian.

Section 3. This act shall take effect October 1, 2020.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #: 88** relating to Child Care Facilities, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

c.c. John Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20

Meeting Date

SB0088

Bill Number (if applicable)

Topic Child Care Facilities

Amendment Barcode (if applicable)

Name Sabrina Sauder-White

Job Title IT Specialist

Address 54224 VIKKI Rd

Phone 904 879 7461

Street

Callahan FL 32011

Email

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Self

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

7-29-20

Meeting Date

88

Bill Number (if applicable)

Topic ALARMS

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. CORONADO DR
Street

Phone 321-436-4447

ORLANDO FL 32804
City State Zip

Email MICHAEL.CRABB@OCFLA.NET

Speaking: For Against Information

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

Representing ORANGE COUNTY SHERIFF

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 124

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Bean

SUBJECT: Custody of Minor Children by Extended Family

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 124 authorizes a court to include in its order granting “temporary” or “concurrent” custody to a child’s extended family member any provision requested by the petitioner which is in the best interest of the child. As under current law, an award of custody of a child for an indefinite period is considered “temporary” if the award excludes the parents, but “concurrent” if custody is shared with the parents.

The bill expands the definition of “extended family member” to include “fictive kin”—nonrelatives who have a familial relationship to the child—thus allowing them to petition for concurrent or temporary custody. As for the petition itself, the bill requires it to include “[a]ny other provisions that are related to the best interests of the child.” And the bill authorizes the court to include these provisions, including a transition plan, in its order granting temporary or concurrent custody.

Under the bill, as under current law, a court may order concurrent custody only if the parents do not object, and the court may order temporary custody only if the parents do not object or are unfit. And under current law a court *must* terminate a concurrent custody order if a parent objects to the order, and the court *must* terminate a temporary custody order if the parent becomes a fit parent. However, the bill authorizes a court to maintain a concurrent custody order after a parent objects, or to maintain a temporary custody order after the parents become fit, under certain circumstances. Particularly, a court may maintain these orders beyond objection or fitness to

ensure compliance with a transition plan or other provision of the order which is related to the best interest of the child.

II. Present Situation:

The Concept of Temporary or Concurrent Custody of a Child

Under ch. 751, F.S., a child's extended family member may obtain a court order granting him or her custody of the child for an indefinite period of time. This custody may be exclusive of, or concurrent with, the parent's custody. Custody that is exclusive of the parent's custody is referred to in the statutes as "temporary," and custody that is shared by the relative and the parent is "concurrent." Nonetheless, both are indefinite and tend to be temporary.

This system differs from "dependency," provided in ch. 39, F.S., in that it pertains to *non-dependent* children.

Petition for Temporary or Concurrent Custody

To obtain a court order granting temporary or custody of a child, an extended family member of the child must file a petition for temporary or concurrent custody.¹ In either type of petition, the petitioner must state several things to the court, to the best of his or her knowledge, including the places where the child has lived during the past 5 years, information about other custody proceedings involving the child, the petitioner's relationship to the child, and that it is in the child's best interest for petitioner to have custody.²

In a petition for concurrent custody, the petitioner must also state:

- The time periods during the last 12 months that the child resided with the petitioner;
- The type of document, if any, provided by the parent or parents to enable the petitioner to act on behalf of the child;
- The services or actions that the petitioner is unable to obtain or undertake without an order of custody; and
- Whether each parent has consented in writing to the entry of an order of concurrent custody.³

In a petition for temporary custody, the petitioner must also state that the parents consent or the petitioner must state "the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child" as defined in the dependency statutes.⁴

Hearing on the Petition for Temporary or Concurrent Custody

The court will then hold a hearing on the petition. At the hearing, the court must hear the evidence concerning the child's need for care by the petitioner, as well as the objection and other testimony of either parent, if present.⁵ The court must grant the petition if it is in the best

¹ See s. 751.03, F.S.

² *Id.*

³ Section 751.03(8), F.S.

⁴ Section 751.03(9), F.S.

⁵ Section 751.05(1), F.S.

interests of the child and the parents do not object.⁶ However, if at least one parent objects the court must proceed in different ways depending on the type of petition.

If at least one parent objects to a petition for concurrent custody, the court must deny the petition and give the petitioner the option of converting the petition to one for temporary custody.⁷ If the petitioner exercises this option, the converted petition will be heard at a later date.⁸

If at least one of the child's parents objects to a petition for temporary custody, the court must grant the petition only if it finds, based on clear and convincing evidence, that the parents are unfit to provide for the care and control of the child.⁹ "In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child," as defined in the dependency statutes.¹⁰

Order Granting Temporary or Concurrent Custody

Order Granting Temporary Custody

In an order granting temporary custody, the statutes authorize a court to grant visitation rights to a child's parent or parents, if it is in the best interest of the child.¹¹ The statutes do not expressly authorize the court to state what parents who have been found unfit must do later to prove their fitness, and thus regain the custody of their child.

Order Granting Concurrent Custody

The order granting concurrent custody may not eliminate or diminish the custodial rights of the child's parent or parents.¹² In fact, the order must expressly state that the grant of custody does not affect the ability of the child's parent or parents to obtain physical custody of the child at any time.^{13, 14}

Terminating Temporary or Concurrent Custody

Terminating Temporary Custody

After the entry of the order granting temporary custody, either parent may petition the court to modify or terminate the order.¹⁵ The court must grant the order upon a finding that the petitioning parent is fit, or upon consent of the relative that took custody of the child.¹⁶

⁶ Section 751.05(2), F.S.

⁷ Section 751.05(3)(a), F.S.

⁸ *Id.*

⁹ Section 751.05(3)(b), F.S.

¹⁰ *Id.*

¹¹ Section 751.05(2), F.S.

¹² Section 751.05(4)(a), F.S.

¹³ *Id.*

¹⁴ An order granting temporary or concurrent custody may require a parent to pay child support to the relative if the parent was served with process, the petition requests the court to child support, and there is evidence of the parent's ability to pay. However, the court may order the redirection of all or part of an existing child support payment to be paid to the relative who is being granted temporary or concurrent custody. Section 751.05(5), F.S.

¹⁵ Section 751.05(6), F.S.

¹⁶ Section 751.05(6), F.S.

If a court terminates temporary custody, the child might immediately return to his or her parent's custody, and nothing in statute precludes a parent from restricting contact between the child and the relative, regardless of how long the temporary custody lasted.

Terminating Concurrent Custody

The petitioner or either parent may make a motion to terminate concurrent custody at any time.¹⁷ The court must terminate concurrent custody on a parent's request.¹⁸

III. Effect of Proposed Changes:

The bill authorizes a court to include in a temporary or concurrent custody order any provision that is in the best interest of a child and that was included in the petition for the order. The bill also adds "fictive kin" to the class of people who may file a petition. "Fictive kin" means "a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child."¹⁹

The bill requires an extended family member to include in his or her petition for concurrent or temporary custody "[a]ny other provisions that are related to the best interests of the child." And the bill authorizes the court to include these provisions, including a transition plan, in its order granting temporary or concurrent custody.

Under the bill, as under current law, a court may order concurrent custody only if the parents do not object, and the court may order temporary custody only if the parents do not object or are unfit. And under current law a court *must* terminate a concurrent custody order if a parent objects to the order, and the court *must* terminate a temporary custody order if the parent becomes a fit parent. However, the bill authorizes a court to maintain a concurrent custody order after a parent objects, or to maintain a temporary custody order after the parents become fit, under certain circumstances. Particularly, a court may maintain these orders beyond objection or fitness to ensure compliance with a transition plan or other provision of the order which is related to the best interest of the child.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ Section 751.05(7), F.S.

¹⁸ *Id.*

¹⁹ Section 39.01(29), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Under the bill, a court may order anything requested by the petitioner which is in the best interest of a child. This could include a transition plan that would require parents to permit a nonparent to see their child following a period of temporary or concurrent custody.

This aspect of the bill might be unconstitutional, as Florida courts have repeatedly held that parents' constitutional right to determine who sees their child may be infringed only if harm to the child would otherwise result:

Florida's constitutional right to privacy recognizes the zone of autonomy around a nuclear family into which a judge, legislator, or official, no matter how well intentioned, simply cannot go. This zone protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *D.M.T. v. T.M.H.*, 129 So.3d 320, 336 (Fla. 2013) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). The only exception occurs if one of the members of the family is at risk of significant harm. In this regard, the Florida Supreme Court has held that "[n]either the legislature nor the courts may properly intervene in parental decision making absent significant harm to the child threatened by or resulting from those decisions." *Von Eiff*, 720 So.2d at 514. Under these principles, it is violation of a parent's right to privacy for the legislature to confer on non-parents, even biological relatives such as grandparents, the right to visit minor children against the parents will. *See Beagle v. Beagle*, 678 So.2d 1271, 1277 (Fla. 1996) (holding that the State cannot impose grandparent visitation upon a minor child "without first demonstrating a harm to the child").²⁰

Moreover, the courts have held that the removal of a beneficial relationship with a grandparent or other person who acted like a parent is not the type of harm necessary to grant custody to or visitation with a nonparent.²¹

²⁰ *De Los Milagros Castellet v. Pereira*, 225 So. 3d 368, 370-371 (Fla. 3d DCA 2017).

²¹ *Id.* at 372. The *Pereira* court explained that the removal of a beneficial relationship does not constitute sufficient harm to interfere with a parent's authority over a child as follows:

As our Supreme Court has held, "[t]here may be many beneficial relationships for a child, but it is not for the government to decide with whom the child builds these relationships. This concept implicates the very core of our constitutional freedoms and embodies the essence of Florida's constitutional right to

Nonetheless, because child custody awards under ch. 751, F.S., often involve unfit parents, as well as the consent of or lack of objection to custody by a parent at the outset of the proceedings, the provisions of the bill may be distinguishable from the court opinions in which a fit parent objected to child custody at the outset of legal proceedings. Whether these differences are sufficient to survive a challenge based on the privacy rights of a fit parent is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 751.01, 751.011, 751.02, 751.03, and 751.05.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Judiciary on December 10, 2019:

The committee substitute requires a petitioner to include in his or her petition for concurrent or temporary custody any provision that he or she believes is in the best

privacy.” *Von Eiff*, 720 So.2d at 516. The child’s life may well be enhanced by the additional financial, social, spiritual, and emotional support the former partner might provide. But whether the benefits of such support, from a former partner who is neither the biological or legal parent, outweigh possible detriments lies in the hands of the birth mother: the State of Florida cannot wrest that choice from her.

interest of the child. Under the bill, the “parties” had to have agreed to these provisions, but the bill was unclear as to who exactly the “parties” would be.

CS by Children, Families, and Elder Affairs on November 5, 2019:

- Expands the definition of the term “extended family member” to include “fictive kin” as defined in Chapter 39, Florida Statutes.
- Revises the standard for transitions of custody from considering the child’s developmental stage and psychological needs to best interests which is the standard for other determinations in Chapter 751, Florida Statutes.
- Clarifies that any conditions related to the best interests of the child to be included in an order will be requested by the parties in the petition.

B. Amendments:

None.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Bean

590-02035-20

2020124c2

1 A bill to be entitled
 2 An act relating to custody of minor children by
 3 extended family; amending s. 751.01, F.S.; revising
 4 the purposes of ch. 751, F.S.; amending s. 751.011,
 5 F.S.; revising the definition of the term "extended
 6 family member"; amending s. 751.02, F.S.; revising the
 7 requirements for individuals seeking concurrent
 8 custody; amending s. 751.03, F.S.; allowing any other
 9 provisions related to the best interest of the child
 10 to be considered in a petition for temporary or
 11 concurrent custody; amending s. 751.05, F.S.;
 12 authorizing courts to include provisions requested in
 13 petitions for temporary or concurrent custody which
 14 relate to the best interest of the child; authorizing
 15 courts to require parties to comply with provisions
 16 approved in the order which relate to the best
 17 interest of the child; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (4) is added to section 751.01,
 22 Florida Statutes, to read:

23 751.01 Purpose of act.—The purposes of this chapter are to:
 24 (4) Protect the welfare of minor children by allowing
 25 transitions of custody consistent with their best interest.

26 Section 2. Section 751.011, Florida Statutes, is amended to
 27 read:

28 751.011 Definitions.—As used in this chapter, the term:
 29 (1) "Concurrent custody" means that an eligible extended

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

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30 family member is awarded custodial rights to care for a child
 31 concurrently with the child's parent or parents.

32 (2) "Extended family member" means a person who is:

33 (a) A relative of a minor child within the third degree by
 34 blood or marriage to the parent; ~~or~~

35 (b) The stepparent of a minor child if the stepparent is
 36 currently married to the parent of the child and is not a party
 37 in a pending dissolution, separate maintenance, domestic
 38 violence, or other civil or criminal proceeding in any court of
 39 competent jurisdiction involving one or both of the child's
 40 parents as an adverse party; or

41 (c) An individual who qualifies as "fictive kin" as defined
 42 in s. 39.01.

43 Section 3. Subsection (2) of section 751.02, Florida
 44 Statutes, is amended to read

45 751.02 Temporary or concurrent custody proceedings;
 46 jurisdiction.—

47 (2) In addition to the requirements of subsection (1), an
 48 individual seeking concurrent custody must:

49 (a) Currently have physical custody of the child or ~~and~~
 50 have had physical custody of the child for at least 10 days in
 51 any 30-day period within the last 12 months; and

52 (b) Not have signed, written documentation from a parent
 53 which is sufficient to enable the custodian to do all of the
 54 things necessary to care for the child which are available to
 55 custodians who have an order issued under s. 751.05.

56 Section 4. Subsection (13) of section 751.03, Florida
 57 Statutes, is amended, and subsection (14) is added to that
 58 section, to read:

Page 2 of 4

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

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59 751.03 Petition for temporary or concurrent custody;
 60 contents.—Each petition for temporary or concurrent custody of a
 61 minor child must be verified by the petitioner, who must be an
 62 extended family member, and must contain statements, to the best
 63 of the petitioner's knowledge and belief, providing:

64 (13) ~~A statement of~~ The period of time for which the
 65 petitioner is requesting temporary custody, including a
 66 statement of the reasons supporting that request.

67 (14) Any other provisions that are related to the best
 68 interest of the child, including, but not limited to, a plan for
 69 transitioning custody.

70 Section 5. Subsections (4), (6), and (7) of section 751.05,
 71 Florida Statutes, are amended to read:

72 751.05 Order granting temporary or concurrent custody.—

73 (4) The order granting:

74 (a) Concurrent custody of the minor child may not eliminate
 75 or diminish the custodial rights of the child's parent or
 76 parents. The order must expressly state that the grant of
 77 custody does not affect the ability of the child's parent or
 78 parents to obtain physical custody of the child at any time,
 79 except that the court may approve provisions requested in the
 80 petition which are related to the best interest of the child.

81 (b) Temporary custody of the minor child to the petitioner
 82 may include provisions requested in the petition which are
 83 related to the best interest of the child and may also grant
 84 visitation rights to the child's parent or parents, if it is in
 85 the best interest of the child.

86 (6) At any time, either or both of the child's parents may
 87 petition the court to modify or terminate the order granting

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2020124c2

88 temporary custody. The court shall terminate the order upon a
 89 finding that the parent is a fit parent, or by consent of the
 90 parties, except that the court may require the parties to comply
 91 with provisions approved in the order which are related to the
 92 best interest of the child. The court may modify an order
 93 granting temporary custody if the parties consent or if
 94 modification is in the best interest of the child.

95 (7) At any time, the petitioner or either or both of the
 96 child's parents may move the court to terminate the order
 97 granting concurrent custody.

98 (a) The court shall terminate the order upon a finding that
 99 either or both of the child's parents object to the order,
 100 except that the court may require the parties to comply with
 101 provisions approved in the order which are related to the best
 102 interest of the child.

103 (b) The fact that an order for concurrent custody has been
 104 terminated does not preclude any person who is otherwise
 105 eligible to petition for temporary custody from filing such
 106 petition.

107 Section 6. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

1/29/20

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

124

Meeting Date

Bill Number (if applicable)

Topic

Custody of Minor Child

Amendment Barcode (if applicable)

Name

Victoria Zapp

Job Title

Chief Policy Officer

Address

317 Park Ave

Phone

850/561-1102

Street

TLH

FL

32301

Email

VICTORIA@fchildren.org

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

FL Coalition for Children

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)

1/29/20

Meeting Date

SB 0124

Bill Number (if applicable)

Topic Custody by Extended Family

Amendment Barcode (if applicable)

Name Sabrina Sander-White

Job Title IT Specialist

Address 54224 VIKKI Rd

Phone 904 879 7461

Street

City

Callahan

FL
State

32011
Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 128

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Wright

SUBJECT: Public Records/Judicial Assistants

DATE: January 27, 2020 **REVISED:** _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 128 creates a public record exemption for specified information that may identify or locate current or former judicial assistants and their spouses and children. Judicial assistants provide administrative, secretarial, organizational, and clerical support to an assigned judge's office. They are employed in the county and circuit courts, district courts of appeal, and the Florida Supreme Court.

The bill exempts from public disclosure the following information that relates to a current or former judicial assistant:

- A judicial assistant's address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of a judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by a judicial assistant's children.

This exemption applies to information held by an agency before, on, or after July 1, 2020.

The bill provides a statement of public necessity as required by the State Constitution.

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

The bill takes effect July 1, 2020.

II. Present Situation:

Public Records Law

Overview

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

Legislative and Judicial Records

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

Definition

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ 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” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

Access

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Exemptions

The Legislature has the sole authority to create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose 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;¹²
- 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;¹³ or
- It protects trade or business secrets.¹⁴

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

“Confidential and Exempt” or “Exempt” Designations

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁷ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁸

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² Section 119.15(6)(b)1., F.S.

¹³ Section 119.15(6)(b)2., F.S.

¹⁴ Section 119.15(6)(b)3., F.S.

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., art. I, s. 24(c) and FLA. CONST., art. X, s. 12(e).

¹⁷ If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁹ with specified exceptions.²⁰ It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²²

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²³

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁴ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁵

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁶ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of

¹⁹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

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

²³ Section 119.071(4)(a) and (b), F.S.

²⁴ Section 119.071(4)(a)1., F.S.

²⁵ Section 119.071(4)(a), F.S.

²⁶ Section 119.071(5)(a)5., F.S.

that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.²⁷

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.²⁸

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.²⁹

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.³⁰ Additionally, all of these exemptions have retroactive application.³¹ In order to have such exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.³² Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.³³

Justices and Judges

The state judiciary, as established in Article V of the State Constitution, is composed of the justices of the Supreme Court and the judges in Florida's five District Courts of Appeal, 20 Circuit Courts, and 67 County Courts.³⁴ When carrying out their official duties, the judges and justices often preside over matters that are emotionally charged, whether in a trial, appeal, criminal proceeding, dependency hearing, or domestic or family law matter.

In 1991, and in an effort to protect the members of the judiciary, the Legislature enacted a public records exemption for current justices and judges and their families. The exemption protected their home addresses and telephone numbers as well as the home addresses, telephone numbers, and places of employment of their spouses and children, and the names and locations of schools

²⁷ Section 119.071(5)(a)5.f. and g., F.S.

²⁸ Section 119.071(4)(b)1., F.S.

²⁹ Section 119.071(4)(b)2., F.S.

³⁰ Section 119.071(4)(d)3., F.S.

³¹ Section 119.071(4)(d)5., F.S.

³² Section 119.0714(2)(f) and (3)(f), F.S.

³³ Section 119.071(4)(d)4., F.S.

³⁴ FLA. CONST. art V. *See also* Florida Courts, <http://www.flcourts.org/florida-courts> (last visited Sept. 11, 2019).

and day care facilities attended by their children.³⁵ In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.³⁶ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.³⁷

In 2017, the Legislature expanded this exemption to also exempt from disclosure the names of the justices' or judges' spouses and children.³⁸

Judicial Assistants

Judicial assistants are assigned to individual justices or judges to provide administrative, secretarial, and clerical support. At the trial court level in particular, the judicial assistant is generally responsible for: maintaining the judge's professional and personal calendar; coordinating with attorneys to schedule hearings and trials; prepare orders, notices, and other correspondence; and preparing financial disclosures and travel vouchers. Most significantly, trial court level judicial assistants interact "with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues."³⁹

Based on this type of interaction, several trial court judicial assistants have reported that attorneys, litigants, or a litigant's family members have held the judicial assistant responsible for an adverse decision made by the judge. These judicial assistants reported instances of a litigant or litigant's family members showing up at the judicial assistant's home, contacting the judicial assistant on his or her personal cell phone, making threats against the judicial assistant, or naming the judicial assistant in a civil law suit.⁴⁰

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2.e., F.S., to exempt certain information relating to judicial assistants from the public disclosure requirements of the public record laws. The following information for a current or former judicial assistant will be exempt:

- A judicial assistant's address, date of birth, and telephone numbers.

³⁵ Ch. 91-149, Laws of Fla. Because public necessity statements were not required for public records exemptions prior to the adoption of Article I, section 24, Florida Constitution, there is no public necessity statement explaining why the exemption was created.

³⁶ Ch. 2012-149, Laws of Fla.

³⁷ Ch. 2012-149, Laws of Fla.

³⁸ Ch. 2017-66, Laws of Fla.

³⁹Florida State Courts System Class Specification, Class Title: Judicial Assistant – Circuit Court, *Examples of Work Performed*, available at <https://www.flcourts.org/content/download/217825/1972896/Judicial-Assistant-Circuit-Court-508.pdf>. For additional job descriptions of judicial assistants at the county court, district court, and Supreme Court levels, please see <https://www.flcourts.org/content/download/217827/1972908/Judicial-Assistant-County-Court-508.pdf>, <https://www.flcourts.org/content/download/217745/1972416/Appellate-Judicial-Assistant-District-Court-508-1.pdf>, and https://www.flcourts.org/content/download/217748/1972434/Appellate_Judicial_Assistant_Supreme-Court_508.pdf.

⁴⁰ See Judicial Assistants Association of Florida, *JA Threats* (2019) (on file with Senate Judiciary Committee).

- The names, home addresses, telephone numbers, dates of birth, and places of employment of a judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by a judicial assistant's children.

The exemption applies to information held by an agency before, on, or after July 1, 2020.

Section 2 contains the public necessity statement which explains why the exemption is necessary. The public necessity statement provides that, because judicial assistants frequently create ill will with litigants, the accused, the convicted, and their associates, judicial assistants and their families are at risk. Judicial assistants can become targets of fraud or revenge by disgruntled litigants who know the judicial assistants' names, their personal information, and location. For these reasons, the identifying information of former and current judicial assistants and their family members should be exempt from public disclosure.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for final passage of a bill creating an exemption to the public records requirements.⁴¹ Because this bill creates an exemption for certain information relating to current or former judicial assistants, it requires a two-thirds vote of each house to be enacted.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

⁴¹ Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a "Vote or other action of a legislative house . . . means the vote or action of a majority or other specified percentage of those members voting on the matter." Accordingly, this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.

The public necessity statement notes that judicial assistants can create ill will with litigants through the course of their work and having their personal identifying information available publicly puts them at risk for fraud or acts of revenge. For these reasons, the exemptions do not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information from the records custodian without a signed waiver if the employee or the employee’s agency requests that the home address information be exempted.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of judicial assistants because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. However, the costs would be absorbed as they are part of the day-to-day agency responsibilities.

Although the Office of the State Courts Administrator (OSCA) has not submitted a Judicial Impact Statement for this bill at this time, it did submit a Judicial Impact Statement for SB 746 in 2019, which is virtually identical to this bill. In the previous analysis, OSCA stated that it did not anticipate a judicial or court workload impact from creating public records exemptions for judicial assistants and their families.

Similarly, the Florida Court Clerks and Comptrollers have not submitted a bill analysis of this bill but did submit an analysis for SB 746 in 2019. The association did not anticipate any significant operational, policy, or fiscal impact from that bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the 4th year after enactment instead of the 5th year. It can be reasoned, however, that advancing the scheduled review and repeal by 1 year is not problematic because the Open Government Sunset Review Act does not apply to an exemption that applies solely to the State Court System. Additionally, the deviation from the schedule set forth in the Open Government Sunset Review Act is supported by the reasoning that a previous legislature cannot bind a future legislature.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on October 14, 2019:

The CS amends the title to reflect that the public records exemption applies retroactively.

B. Amendments:

None.

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

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; providing an exemption from public
4 records requirements for certain identifying and
5 location information of current and former judicial
6 assistants and their spouses and children; providing
7 for retroactive application of the exemption;
8 providing a statement of public necessity; providing
9 an effective date.

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

12
13 Section 1. Paragraph (d) of subsection (4) of section
14 119.071, Florida Statutes, is amended to read:

15 119.071 General exemptions from inspection or copying of
16 public records.—

17 (4) AGENCY PERSONNEL INFORMATION.—

18 (d)1. For purposes of this paragraph, the term:

19 a. "Home addresses" means the dwelling location at which an
20 individual resides and includes the physical address, mailing
21 address, street address, parcel identification number, plot
22 identification number, legal property description, neighborhood
23 name and lot number, GPS coordinates, and any other descriptive
24 property information that may reveal the home address.

25 b. "Telephone numbers" includes home telephone numbers,
26 personal cellular telephone numbers, personal pager telephone
27 numbers, and telephone numbers associated with personal
28 communications devices.

29 2.a. The home addresses, telephone numbers, dates of birth,

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30 and photographs of active or former sworn law enforcement
31 personnel or of active or former civilian personnel employed by
32 a law enforcement agency, including correctional and
33 correctional probation officers, personnel of the Department of
34 Children and Families whose duties include the investigation of
35 abuse, neglect, exploitation, fraud, theft, or other criminal
36 activities, personnel of the Department of Health whose duties
37 are to support the investigation of child abuse or neglect, and
38 personnel of the Department of Revenue or local governments
39 whose responsibilities include revenue collection and
40 enforcement or child support enforcement; the names, home
41 addresses, telephone numbers, photographs, dates of birth, and
42 places of employment of the spouses and children of such
43 personnel; and the names and locations of schools and day care
44 facilities attended by the children of such personnel are exempt
45 from s. 119.07(1) and s. 24(a), Art. I of the State
46 Constitution.

47 b. The home addresses, telephone numbers, dates of birth,
48 and photographs of current or former nonsworn investigative
49 personnel of the Department of Financial Services whose duties
50 include the investigation of fraud, theft, workers' compensation
51 coverage requirements and compliance, other related criminal
52 activities, or state regulatory requirement violations; the
53 names, home addresses, telephone numbers, dates of birth, and
54 places of employment of the spouses and children of such
55 personnel; and the names and locations of schools and day care
56 facilities attended by the children of such personnel are exempt
57 from s. 119.07(1) and s. 24(a), Art. I of the State
58 Constitution.

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59 c. The home addresses, telephone numbers, dates of birth,
 60 and photographs of current or former nonsworn investigative
 61 personnel of the Office of Financial Regulation's Bureau of
 62 Financial Investigations whose duties include the investigation
 63 of fraud, theft, other related criminal activities, or state
 64 regulatory requirement violations; the names, home addresses,
 65 telephone numbers, dates of birth, and places of employment of
 66 the spouses and children of such personnel; and the names and
 67 locations of schools and day care facilities attended by the
 68 children of such personnel are exempt from s. 119.07(1) and s.
 69 24(a), Art. I of the State Constitution.

70 d. The home addresses, telephone numbers, dates of birth,
 71 and photographs of current or former firefighters certified in
 72 compliance with s. 633.408; the names, home addresses, telephone
 73 numbers, photographs, dates of birth, and places of employment
 74 of the spouses and children of such firefighters; and the names
 75 and locations of schools and day care facilities attended by the
 76 children of such firefighters are exempt from s. 119.07(1) and
 77 s. 24(a), Art. I of the State Constitution.

78 e. The home addresses, dates of birth, and telephone
 79 numbers of current or former justices of the Supreme Court,
 80 district court of appeal judges, circuit court judges, ~~and~~
 81 county court judges, and judicial assistants; the names, home
 82 addresses, telephone numbers, dates of birth, and places of
 83 employment of the spouses and children of current or former
 84 justices, ~~and judges, and judicial assistants~~; and the names and
 85 locations of schools and day care facilities attended by the
 86 children of current or former justices, ~~and judges, and judicial~~
 87 assistants are exempt from s. 119.07(1) and s. 24(a), Art. I of

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88 the State Constitution.

89 f. The home addresses, telephone numbers, dates of birth,
 90 and photographs of current or former state attorneys, assistant
 91 state attorneys, statewide prosecutors, or assistant statewide
 92 prosecutors; the names, home addresses, telephone numbers,
 93 photographs, dates of birth, and places of employment of the
 94 spouses and children of current or former state attorneys,
 95 assistant state attorneys, statewide prosecutors, or assistant
 96 statewide prosecutors; and the names and locations of schools
 97 and day care facilities attended by the children of current or
 98 former state attorneys, assistant state attorneys, statewide
 99 prosecutors, or assistant statewide prosecutors are exempt from
 100 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

101 g. The home addresses, dates of birth, and telephone
 102 numbers of general magistrates, special magistrates, judges of
 103 compensation claims, administrative law judges of the Division
 104 of Administrative Hearings, and child support enforcement
 105 hearing officers; the names, home addresses, telephone numbers,
 106 dates of birth, and places of employment of the spouses and
 107 children of general magistrates, special magistrates, judges of
 108 compensation claims, administrative law judges of the Division
 109 of Administrative Hearings, and child support enforcement
 110 hearing officers; and the names and locations of schools and day
 111 care facilities attended by the children of general magistrates,
 112 special magistrates, judges of compensation claims,
 113 administrative law judges of the Division of Administrative
 114 Hearings, and child support enforcement hearing officers are
 115 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 116 Constitution.

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117 h. The home addresses, telephone numbers, dates of birth,
 118 and photographs of current or former human resource, labor
 119 relations, or employee relations directors, assistant directors,
 120 managers, or assistant managers of any local government agency
 121 or water management district whose duties include hiring and
 122 firing employees, labor contract negotiation, administration, or
 123 other personnel-related duties; the names, home addresses,
 124 telephone numbers, dates of birth, and places of employment of
 125 the spouses and children of such personnel; and the names and
 126 locations of schools and day care facilities attended by the
 127 children of such personnel are exempt from s. 119.07(1) and s.
 128 24(a), Art. I of the State Constitution.

129 i. The home addresses, telephone numbers, dates of birth,
 130 and photographs of current or former code enforcement officers;
 131 the names, home addresses, telephone numbers, dates of birth,
 132 and places of employment of the spouses and children of such
 133 personnel; and the names and locations of schools and day care
 134 facilities attended by the children of such personnel are exempt
 135 from s. 119.07(1) and s. 24(a), Art. I of the State
 136 Constitution.

137 j. The home addresses, telephone numbers, places of
 138 employment, dates of birth, and photographs of current or former
 139 guardians ad litem, as defined in s. 39.820; the names, home
 140 addresses, telephone numbers, dates of birth, and places of
 141 employment of the spouses and children of such persons; and the
 142 names and locations of schools and day care facilities attended
 143 by the children of such persons are exempt from s. 119.07(1) and
 144 s. 24(a), Art. I of the State Constitution.

145 k. The home addresses, telephone numbers, dates of birth,

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

162 1. The home addresses, telephone numbers, dates of birth,
 163 and photographs of current or former public defenders, assistant
 164 public defenders, criminal conflict and civil regional counsel,
 165 and assistant criminal conflict and civil regional counsel; the
 166 names, home addresses, telephone numbers, dates of birth, and
 167 places of employment of the spouses and children of current or
 168 former public defenders, assistant public defenders, criminal
 169 conflict and civil regional counsel, and assistant criminal
 170 conflict and civil regional counsel; and the names and locations
 171 of schools and day care facilities attended by the children of
 172 current or former public defenders, assistant public defenders,
 173 criminal conflict and civil regional counsel, and assistant
 174 criminal conflict and civil regional counsel are exempt from s.

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175 119.07(1) and s. 24(a), Art. I of the State Constitution.
 176 m. The home addresses, telephone numbers, dates of birth,
 177 and photographs of current or former investigators or inspectors
 178 of the Department of Business and Professional Regulation; the
 179 names, home addresses, telephone numbers, dates of birth, and
 180 places of employment of the spouses and children of such current
 181 or former investigators and inspectors; and the names and
 182 locations of schools and day care facilities attended by the
 183 children of such current or former investigators and inspectors
 184 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 185 Constitution.
 186 n. The home addresses, telephone numbers, and dates of
 187 birth of county tax collectors; the names, home addresses,
 188 telephone numbers, dates of birth, and places of employment of
 189 the spouses and children of such tax collectors; and the names
 190 and locations of schools and day care facilities attended by the
 191 children of such tax collectors are exempt from s. 119.07(1) and
 192 s. 24(a), Art. I of the State Constitution.
 193 o. The home addresses, telephone numbers, dates of birth,
 194 and photographs of current or former personnel of the Department
 195 of Health whose duties include, or result in, the determination
 196 or adjudication of eligibility for social security disability
 197 benefits, the investigation or prosecution of complaints filed
 198 against health care practitioners, or the inspection of health
 199 care practitioners or health care facilities licensed by the
 200 Department of Health; the names, home addresses, telephone
 201 numbers, dates of birth, and places of employment of the spouses
 202 and children of such personnel; and the names and locations of
 203 schools and day care facilities attended by the children of such

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204 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 205 the State Constitution.
 206 p. The home addresses, telephone numbers, dates of birth,
 207 and photographs of current or former impaired practitioner
 208 consultants who are retained by an agency or current or former
 209 employees of an impaired practitioner consultant whose duties
 210 result in a determination of a person's skill and safety to
 211 practice a licensed profession; the names, home addresses,
 212 telephone numbers, dates of birth, and places of employment of
 213 the spouses and children of such consultants or their employees;
 214 and the names and locations of schools and day care facilities
 215 attended by the children of such consultants or employees are
 216 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 217 Constitution.
 218 q. The home addresses, telephone numbers, dates of birth,
 219 and photographs of current or former emergency medical
 220 technicians or paramedics certified under chapter 401; the
 221 names, home addresses, telephone numbers, dates of birth, and
 222 places of employment of the spouses and children of such
 223 emergency medical technicians or paramedics; and the names and
 224 locations of schools and day care facilities attended by the
 225 children of such emergency medical technicians or paramedics are
 226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 227 Constitution.
 228 r. The home addresses, telephone numbers, dates of birth,
 229 and photographs of current or former personnel employed in an
 230 agency's office of inspector general or internal audit
 231 department whose duties include auditing or investigating waste,
 232 fraud, abuse, theft, exploitation, or other activities that

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233 could lead to criminal prosecution or administrative discipline;
 234 the names, home addresses, telephone numbers, dates of birth,
 235 and places of employment of spouses and children of such
 236 personnel; and the names and locations of schools and day care
 237 facilities attended by the children of such personnel are exempt
 238 from s. 119.07(1) and s. 24(a), Art. I of the State
 239 Constitution.

240 s. The home addresses, telephone numbers, dates of birth,
 241 and photographs of current or former directors, managers,
 242 supervisors, nurses, and clinical employees of an addiction
 243 treatment facility; the home addresses, telephone numbers,
 244 photographs, dates of birth, and places of employment of the
 245 spouses and children of such personnel; and the names and
 246 locations of schools and day care facilities attended by the
 247 children of such personnel are exempt from s. 119.07(1) and s.
 248 24(a), Art. I of the State Constitution. For purposes of this
 249 sub-subparagraph, the term "addiction treatment facility" means
 250 a county government, or agency thereof, that is licensed
 251 pursuant to s. 397.401 and provides substance abuse prevention,
 252 intervention, or clinical treatment, including any licensed
 253 service component described in s. 397.311(26).

254 t. The home addresses, telephone numbers, dates of birth,
 255 and photographs of current or former directors, managers,
 256 supervisors, and clinical employees of a child advocacy center
 257 that meets the standards of s. 39.3035(1) and fulfills the
 258 screening requirement of s. 39.3035(2), and the members of a
 259 Child Protection Team as described in s. 39.303 whose duties
 260 include supporting the investigation of child abuse or sexual
 261 abuse, child abandonment, child neglect, and child exploitation

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262 or to provide services as part of a multidisciplinary case
 263 review team; the names, home addresses, telephone numbers,
 264 photographs, dates of birth, and places of employment of the
 265 spouses and children of such personnel and members; and the
 266 names and locations of schools and day care facilities attended
 267 by the children of such personnel and members are exempt from s.
 268 119.07(1) and s. 24(a), Art. I of the State Constitution.

269 3. An agency that is the custodian of the information
 270 specified in subparagraph 2. and that is not the employer of the
 271 officer, employee, justice, judge, or other person specified in
 272 subparagraph 2. shall maintain the exempt status of that
 273 information only if the officer, employee, justice, judge, other
 274 person, or employing agency of the designated employee submits a
 275 written request for maintenance of the exemption to the
 276 custodial agency.

277 4. An officer, an employee, a justice, a judge, or other
 278 person specified in subparagraph 2. may submit a written request
 279 for the release of his or her exempt information to the
 280 custodial agency. The written request must be notarized and must
 281 specify the information to be released and the party that is
 282 authorized to receive the information. Upon receipt of the
 283 written request, the custodial agency shall release the
 284 specified information to the party authorized to receive such
 285 information.

286 5. The exemptions in this paragraph apply to information
 287 held by an agency before, on, or after the effective date of the
 288 exemption.

289 6. This paragraph is subject to the Open Government Sunset
 290 Review Act in accordance with s. 119.15 and shall stand repealed

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291 on October 2, 2024, unless reviewed and saved from repeal
292 through reenactment by the Legislature.

293 Section 2. The Legislature finds that it is a public
294 necessity that the home addresses, dates of birth, and telephone
295 numbers of current or former judicial assistants; the names,
296 home addresses, telephone numbers, dates of birth, and places of
297 employment of the spouses and children of such judicial
298 assistants; and the names and locations of schools and day care
299 facilities attended by the children of such judicial assistants
300 be made exempt from s. 119.07(1), Florida Statutes, and s.
301 24(a), Article I of the State Constitution. Such identifying and
302 location information can be used as a tool to perpetuate fraud
303 against an individual and to acquire sensitive personal,
304 financial, medical, and familial information, the release of
305 which could cause great financial harm to the individual. In the
306 course of assisting in making rulings, entering judgments,
307 imposing sentences, or reviewing cases, judicial assistants
308 frequently do not create good will with litigants, the accused,
309 the convicted, and their associates and families, thus making
310 the judicial assistants, and their spouses and children, targets
311 for acts of revenge. This risk continues after judicial
312 assistants complete their public service. Disgruntled
313 individuals may wait to commit an act of revenge until the
314 employment of a judicial assistant ends. If such identifying and
315 location information is released, the safety of current or
316 former judicial assistants and their spouses and children could
317 be seriously jeopardized. For these reasons, the Legislature
318 finds that it is a public necessity that such information be
319 made exempt from public records requirements.

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320 Section 3. This act shall take effect July 1, 2020.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

October 14, 2019

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 128 – Public Records/Judicial Assistants

Dear Chair Benacquisto:

Senate Bill 128, relating to Public Records/Judicial Assistants has been referred to the Committee on Rules. I am requesting your consideration on placing SB 128 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:

□ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
□ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20
Meeting Date

CS/SB 128
Bill Number (if applicable)

Topic Public Records Exemption for JAs

Amendment Barcode (if applicable)

Name Alison B. Dudley

Job Title Pres., AB Dudley & Associates

Address PO Box 428
Street

Phone 850/559-1139

Tallahassee FL 32302
City State Zip

alison@dudley2dudleyandassociates.com
Email

Speaking: For Against Information

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

Representing Judicial Assistants Association 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
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 294

INTRODUCER: Senators Wright and Baxley

SUBJECT: Crimes Against Veterans

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 294 creates the “Florida Veterans Protection Act,” which amends the “White Collar Crime Victim Protection Act” to punish a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes 10 or more veterans. The commission of this act is a first degree felony ranked in level 9 of the offense severity ranking chart of the Criminal Punishment Code (Code). Additionally, a person convicted of an aggravated white collar crime may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater. This person is also liable for all court costs and must make restitution to each victim of the crime.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Veterans and Fraud

According to the Federal Trade Commission, in 2018, Florida ranked first in the nation in fraud and fourth in the nation in identity theft.¹ Although veterans are less than 10 percent of the

¹ *Consumer Sentinel Network Data Book 2018* (Feb. 2019), pp. 4, 20-21, Federal Trade Commission, , available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf (last visited on Dec. 17, 2019). There were 210,174 fraud reports (1,002 per 100K population) and 37,797 identity theft reports (180 per 100,000 population). *Id.* at pp. 20-21.

population in the United States, they represent one-third of the victims of investment fraud.² Data provided from the Federal Trade Commission’s Consumer Sentinel program, the largest repository of fraud complaints in the nation, reveals an increase by 63 percent of complaints filed by military veterans over the past five years.³

In a 2017 survey conducted by the American Association of Retired Persons (AARP), researchers reported that of those surveyed, during the five years prior, twice as many veterans as nonveterans lost money to fraudulent scams (16 percent veterans to 8 percent non-veterans).⁴ And nearly 8 in 10 veterans (78 percent) reported having received a scam attempt in the last five years that was seeking to take advantage of their status as a military veteran.⁵

Statutory Definition of “Veteran”

A “veteran” is defined in s. 1.01, F.S., as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later was upgraded to a discharge under honorable conditions, regardless of a designation by the United States Department of Veterans Affairs as an other than honorable discharge or release.⁶

White Collar Crime Victims Protection Act

Section 775.0844, F.S., the “White Collar Crime Victims Protection Act” (Act), punishes a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes:

- 10 or more elderly persons, as defined in s. 825.101, F.S.;⁷
- 20 or more persons as defined in s. 1.01, F.S.;⁸ or
- The State of Florida, any state agency, any of the state’s political subdivisions, or any agency of the state’s political subdivisions.⁹

The Act defines a “white collar crime” as any of the following offenses:

- The commission of, or a conspiracy to commit, any felony offense specified in:
 - Ch. 560, F.S., relating to the Money Transmitters’ Code.
 - Ch. 812, F.S., relating to theft, robbery, and related crimes.
 - Ch. 815, F.S., relating to computer-related crimes.

² *Under Fire: Military Veterans and Consumer Fraud in the United States* (Nov. 2017), p. 2, AARP Washington State, available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2017/military-veterans-consumer-fraud.doi.10.26419%252Fres.00182.001.pdf (last visited on Dec. 17, 2019).

³ *Id.*

⁴ *Id.* at p. 3.

⁵ “Examples include improving your VA loan, taking advantage of a little-known government program[s] for vets or paying for a back, knee, or arm brace because of one’s military service.” *Id.* at p. 3.

⁶ Section 1.01(14), F.S.

⁷ Section 825.101(4), F.S., defines an “elderly person” as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

⁸ Section 1.01(3), F.S., provides that the word “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁹ Section 775.0844(5), F.S.

- Ch. 817, F.S., relating to fraudulent practices.
- Ch. 825, F.S., relating to abuse, neglect, and exploitation of elderly persons and disabled adults.
- Ch. 831, F.S., relating to forgery and counterfeiting.
- Ch. 832, F.S., relating to the issuance of worthless checks and drafts.
- Ch. 838, F.S., relating to bribery and misuse of public office.
- Ch. 839, F.S., relating to offenses by public officers and employees.
- Ch. 895, F.S., relating to offenses concerning racketeering and illegal debts.
- Ch. 896, F.S., relating to offenses related to financial transactions.
- A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud.
- A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property.
- A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.¹⁰

The Act defines an “aggravated white collar crime” as engaging in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such crimes occurred after the effective date of the Act.

The commission of an aggravated white collar crime under the Act is a first degree felony,¹¹ which is ranked in level 9 of the offense severity ranking chart of the Code (see discussion, *supra*).

In addition to a sentence otherwise authorized by law, a person convicted of an aggravated white collar crime under the Act may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater.¹² This person is also liable for all court costs and must make restitution to each victim of the crime.¹³

The court must hold a hearing to determine the identity of qualifying victims and order the defendant to pay restitution based on his or her ability to pay, in accordance with the Act and s. 775.089, F.S., relating to restitution. The court must also make the payment of restitution a condition of any probation granted to the defendant by the court. Notwithstanding any other law,

¹⁰ Section 775.0844(3), F.S.

¹¹ Section 775.0844(5), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹² Section 775.0844(7), F.S.

¹³ A victim of the offense does not have to be named in the information or indictment. A victim is a person directly and proximately harmed as a result of the commission of the offense for which restitution may be ordered, including any person directly harmed by the defendant’s criminal conduct in the course of the commission of the aggravated white collar crime. Section 775.0844(8), F.S.

the court may order continued probation for a defendant convicted under the Act for up to 10 years or until full restitution is made to the victim, whichever occurs earlier.¹⁴

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹⁵ (Code) as “Florida’s primary sentencing policy.”¹⁶ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁷ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.¹⁸ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,¹⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.²⁰

III. Effect of Proposed Changes:

The bill creates the “Florida Veterans Protection Act,” which amends s. 775.0844, F.S., the “White Collar Crime Victim Protection Act,” to punish a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes 10 or more veterans. The commission of this act is a first degree felony ranked in level 9 of the offense severity ranking chart of the Code. Additionally, a person convicted of an aggravated white collar crime may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater. This person is also liable for all court costs and must make restitution to each victim of the crime.

The term “veteran” is defined pursuant to the definition of that term in s. 1.01, F.S. (See “Present Situation” section of this analysis.)

The bill takes effect October 1, 2020.

¹⁴ Section 775.0844(8)(a), F.S. The court retains jurisdiction to enforce its order to pay fines or restitution. The court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court. Section 775.0844(8)(b), F.S.

¹⁵ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁶ *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf (last visited on Dec. 17, 2019).

¹⁷ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁸ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁹ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²⁰ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None identified.

B. Private Sector Impact:

To the extent that this bill acts as a deterrent, fewer veterans may experience financial loss as a result of fraud and related offenses.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.²¹

VI. Technical Deficiencies:

None.

²¹ The preliminary EDR estimate is on file with the Senate Committee on Criminal Justice. According to the Department of Corrections, in FY 18-19, the court sentenced two offenders to prison for violating s. 775.0844, F.S. Given the low level of offenders, this expansion should not have a significant impact on prison beds. *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.0844 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Wright

14-00381-20

2020294__

1 A bill to be entitled
 2 An act relating to crimes against veterans; providing
 3 a short title; amending s. 775.0844, F.S.; providing
 4 an enhanced sentence for any person who commits
 5 aggravated white collar crimes against a certain
 6 number of veterans by obtaining or attempting to
 7 obtain a specified amount of money; providing criminal
 8 penalties; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. This act may be cited as the "Florida Veterans
 13 Protection Act."
 14 Section 2. Subsection (5) of section 775.0844, Florida
 15 Statutes, is amended, and subsections (4) and (6) of that
 16 section are republished, to read:
 17 775.0844 White Collar Crime Victim Protection Act.—
 18 (4) As used in this section, "aggravated white collar
 19 crime" means engaging in at least two white collar crimes that
 20 have the same or similar intents, results, accomplices, victims,
 21 or methods of commission, or that are otherwise interrelated by
 22 distinguishing characteristics and are not isolated incidents,
 23 provided that at least one of such crimes occurred after the
 24 effective date of this act.
 25 (5) Any person who commits an aggravated white collar crime
 26 as defined in this section and in so doing either:
 27 (a) Victimizes 10 or more elderly persons, as defined in s.
 28 825.101;
 29 (b) Victimizes 10 or more veterans, as defined in s. 1.01;

Page 1 of 2

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

14-00381-20

2020294__

30 ~~(c)(b)~~ Victimizes 20 or more persons, as defined in s.
 31 1.01; or
 32 ~~(d)(e)~~ Victimizes the State of Florida, any state agency,
 33 any of the state's political subdivisions, or any agency of the
 34 state's political subdivisions,
 35
 36 and thereby obtains or attempts to obtain \$50,000 or more,
 37 commits a felony of the first degree, punishable as provided in
 38 s. 775.082, s. 775.083, or s. 775.084.
 39 (6) Notwithstanding any other provision of chapter 921 or
 40 any other law, an aggravated white collar crime shall be ranked
 41 within the offense severity ranking chart at offense severity
 42 level 9.
 43 Section 3. This act shall take effect October 1, 2020.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

January 14, 2020

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 294 – Crimes Against Veterans

Dear Chair Benacquisto:

Senate Bill 294, relating to Crimes Against Veterans has been referred to the Committee on Rules. I am requesting your consideration on placing SB 294 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:

4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20

Meeting Date

SB 0294

Bill Number (if applicable)

Topic Crimes Against Veterans

Amendment Barcode (if applicable)

Name Sabrina Sandifer - White

Job Title IT Specialist

Address 54226 VIKKI RD

Phone 904 879 7461

Street Callahan

City

FL

State

32011

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing Self

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

1-29-20

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

SB 294

Meeting Date

Bill Number (if applicable)

Topic SB 294

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director, Legislative & Cabinet Affairs

Address PL 11, Capitol

Phone (850) 413-2890

Street

Tallahassee

FL

32399

Email Meredith.Stanfield@

City

State

Zip

myfloridactv.com

Speaking: For Against Information

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

Representing CFO Jimmy Patronis

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)

1/29/2020

Meeting Date

SB 294

Bill Number (if applicable)

Topic Crimes Against Veterans

Amendment Barcode (if applicable)

Name Bruce Comes

Job Title Department Asst. Adjutant

Address _____
Street

Phone 407 868 7045

City

State

Zip

Email bruce.comes@gmail.com

Speaking: For Against Information

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

Representing The American Legion

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
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 7010

INTRODUCER: Governmental Oversight and Accountability Committee and Military and Veterans Affairs and Space Committee

SUBJECT: OGSR/Servicemembers and the Spouses and Dependents of Servicemembers

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Caldwell</u>		MS Submitted as Comm. Bill/Fav
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7010 amends s. 119.0171(5)(k), Florida Statutes, to save from repeal the current exemption for contact information of a servicemember and his or her family that is held by an agency. Specifically, the exemption protects from public inspection and copying identification and location information of current or former active duty servicemembers who served after September 11, 2001, for the United States Armed Forces, a reserve component of the Armed Forces, or the National Guard. The exemption is scheduled for repeal October 2, 2020.

Protected information consists of the:

- Home address, telephone number, and date of birth of a servicemember;
- Home address, telephone number, date of birth, and place of employment of a spouse or dependent; and
- Name and location of a school attended by a spouse or dependent or a day care facility attended by a dependent.

The bill also removes the requirement that the servicemember include a statement that reasonable efforts have been made to otherwise protect the information from public access in their written request to an agency to have qualified information exempted, which expands the exemption. The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote by each house of the Legislature is required for its passage.

This bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ 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.”

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

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Public Records Exemption for Contact Information of Servicemembers

On November 30, 2014, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin, *Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Joint Bulletin).²⁷ In

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS), *Joint Intelligence Bulletin, Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Nov. 30, 2014)(on file with the Senate Committee on Military and Veterans Affairs and Space).

it, the FBI and the DHS warn of potential attacks by the Islamic State of Iraq and the Levant (ISIL) on current and former servicemembers.²⁸ Specifically the report states,

The FBI recently received reporting indicating individuals located overseas are spotting and assessing like-minded individuals in the United States who are willing and capable of conducting attacks against current and former US-based members of the United States military.²⁹

Based on this, the Joint Bulletin urged servicemembers to be mindful of their content and presence on online social media accounts.³⁰

In 2015, the Legislature enacted a public records exemption for the contact and location information of a servicemember and his or her family.³¹ Specifically, the public records exemption protects from disclosure the identification and location information of current or former active duty servicemembers who served after September 11, 2001 of:

- The United States Armed Forces;
- A reserve component of the Armed Forces; or
- The National Guard.

The public records exemption protects from disclosure the identification and location information of the servicemember, his or her spouse, and his or her dependents. The information protected by the exemption consists of the:

- Home address, telephone number (including the telephone number of a personal communications device), and date of birth of a servicemember;
- Home address, telephone number (including the telephone number of a personal communications device), date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

The servicemember must request the exemption in writing and include a statement that the servicemember has made reasonable efforts to protect the information from public access through other means. The term “reasonable efforts” is not defined in law.

The original public necessity statement articulates as justification for the exemption that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized. Specifically, the public necessity statement provided:

Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation’s freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United

²⁸ *Id.*

²⁹ *Id.* at p. 2.

³⁰ *Id.* at p. 2.

³¹ Chapter 2015-86, L.O.F.

States. One terrorist group has allegedly gathered the photographs and home addresses of servicemembers from public sources to create and publish a list of servicemembers in order to make such persons vulnerable to an act of terrorism.³²

The public records exemption is scheduled to repeal on October 2, 2020.

Open Government Sunset Review

Survey on Public Records Exemption

During the interim of 2019, Senate and House staff drafted a survey to query various entities on the public records exemption.³³ Staff sent the survey to 23 state agencies, and the associations for the supervisors of elections and the property appraisers for distribution. Staff received 80 responses, or 51 percent:

- State agencies - Of 22 surveyed, 18 responded, for an 82 percent response rate³⁴;
- Supervisors of Elections - Of 67 surveyed, 21 responded, for a 31 percent response rate; and
- Property Appraisers. - Of 67 surveyed, 41 responded, for a 61 percent response rate.

Requests for Public Record Exemption

When asked about the number of requests made since the exemption took effect, the year 2015, entities receiving the top requests are as follows:

- Agencies - The Department of Highway Safety and Motor Vehicles received 512 requests, the Fish and Wildlife Conservation Commission received 34, and the Department of Law Enforcement received 20 to date;
- Supervisors of Elections - Volusia County received 1,465 requests, Pinellas received 325, and Okaloosa received 243 requests to date;
- Property Appraisers - Brevard County received 1,000 requests; Miami-Dade received 95, and Pinellas County received 76 requests to date.³⁵

Many entities responded that they have received zero requests for this exemption³⁶, and a few did not answer whether they had received requests.

³² *Id.*

³³ *Open Government Sunset Review Questionnaire, Identification and Location Information of Servicemembers* (July 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

³⁴ Surveys were sent to the Departments of Agriculture and Consumer Services, Business and Professional Regulation, Children and Families, Corrections, Economic Opportunity, Education, Elder Affairs, Environmental Protection, Financial Services, Health, Highway Safety and Motor Vehicles, Juvenile Justice, Law Enforcement, Legal Affairs, Lottery, Management Services, Military Affairs, Revenue, State, Transportation, Veterans' Affairs, and the Fish and Wildlife Conservation Commission.

³⁵ A number of agencies and counties report that they maintain data on requests for public records exemptions in the aggregate, so that they have no way of discerning how many requests are made for this specific public records exemption.

³⁶ Entities reporting that they have not received any requests for this public records exemption are: Agencies - the Departments of Corrections, Economic Opportunity, Environmental Protection, Health, Juvenile Justice, and Legal Affairs; Property Appraisers - Alachua, Baker, Bradford, Charlotte, Columbia, Desoto, Dixie, Gilchrist, Gulf, Hardee, Hendry, Indian River, Liberty, Madison, Okeechobee, Putnam, Taylor, Union, and Wakulla counties; and Supervisors of Election - Citrus, Collier, Holmes, and Union counties.

Process for Request of Public Record Exemption

Respondents were asked if the agency has a process in place for a servicemember to request a public records exemption. Entities responded that some provide a form, online, in person or both while others handle it case by case. Several agencies include a public records exemption request form in the packet provided to new employees. Forms typically provide a checkoff list of available exemptions.³⁷ A number of counties specifically identify form DOS-119, provided by the Florida Department of State, as the Public Records Exemption Request form in use by their office.³⁸ The form requires servicemembers to have served after September 11, 2001, and for the applicant to certify, in signing the form that reasonable efforts have been made to protect the information from public disclosure.³⁹

Complaints About Public Records Exemption

When asked whether the agency has received complaints about the exemption, nine entities responded that they had received at least one. Most complaints were made to the Property Appraiser and may indicate the unique nature of the information maintained by their office and accessed for various purposes. As noted by the St. Johns County Property Appraiser:

We occasionally hear verbal complaints, because once someone has made their information confidential within our office, we can no longer discuss any sort of property information with them electronically or over the phone. Further, other organizations or departments (such as the building department) cannot look up the tax payer's information electronically. So, if the taxpayer is trying to pull a permit, or refinance their house, they physically have to come in with their driver's license or ID to receive such information when usually those organizations can simply pull it from our website.⁴⁰

Recommendation on Exemption

When asked whether an entity would recommend continuing the exemption, of total respondents, 37 recommended reenacting the exemption as is. In contrast, 25 respondents recommended reenactment with changes. Of these, 10 respondents recommended deleting the reasonable efforts requirement or defining the term.⁴¹ Twelve other respondents specifically requested that the Legislature lift the restriction on the post-September 11, 2001 date.⁴² Remaining respondents either did not answer the question or specified that they wished to remain neutral.

³⁷ These are the Departments of Education, Environmental Protection, Financial Services, Health, Legal Affairs, Management Services, Military Affairs, and Revenue.

³⁸ These are Bay, Collier, Flagler, Levy, Monroe, Pinellas, Putnam, Volusia, and Walton counties.

³⁹ Florida Department of State, *Public Records Exemption Request, Form DOS-119; Rev. 06/2015*; available at: <https://dos.myflorida.com/media/695507/public-records-exemption-formdos-119.pdf>.

⁴⁰ St. Johns County Property Appraiser, *Survey Response* (July 18, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴¹ These are: the Florida Department of Law Enforcement; the Property Appraisers of Charlotte, Duval, Hernando, Miami-Dade, Palm Beach, St. Lucie, and Wakulla counties; and the Supervisors of Election of Collier and Union counties.

⁴² These are: the Departments of Elder Affairs, Highway Safety and Motor Vehicles, Law Enforcement, and Military Affairs; the Property Appraisers of Brevard and Polk Counties; and the Supervisors of Election of Hernando, Levy, Okaloosa, Pinellas, St. Johns, and Volusia counties.

Only the Alachua County Property Appraiser, St. Johns County Property Appraiser, and Wakulla County Property Appraiser recommended repeal of the exemption.⁴³

Current Threat to Servicemembers

The FBI provided a letter⁴⁴ to the Florida Senate updating threats to servicemembers since its issuance of the Joint Bulletin of 2014. In the letter, the FBI submitted that on September 23, 2016, Ardit Ferizi was sentenced to 20 years imprisonment for providing material support to the Islamic State of Iraq and the Levant (ISIL), and accessing databases containing personal identifying information of tens of thousands of people, including military servicemembers and other governmental personnel. Mr. Ferizi subsequently culled the personal identifying information of servicemembers and other government personnel, which totaled about 1,300 individuals, and provided it to an ISIL member, who on August 11, 2015, posted by tweet a hit list that contained the personal identifying information of the individuals.

In February 2019, the FBI Jacksonville Field Office identified 12 new web pages that were hosting the ISIL hit list with all or some of the personal identifying information of the 1,300 individuals. One of the pages states:

O Crusaders, as you continue your ag[g]ression towards the Islamic State and your bombing campaign against the muslims, know that we are in your emails and computer systems, watching and recording your every move [W]e are extracting confidential data and passing on your personal information to the soldiers ... who ... will strike at your necks in your own lands!⁴⁵

Requirement of Reasonable Efforts

As noted above, what is meant by “a reasonable effort” to protect information from public access is not defined in law. Prior to 2017, various other public record exemptions required the requesting applicant to include a written statement that a reasonable effort had been made to protect the information from other sources.

In 2017, however, the Legislature deleted this requirement from the following exemptions afforded to:

- A general magistrate;
- A special magistrate;
- A judge of compensation claims;
- An administrative law judge of the Division of Administrative hearings;
- A child support enforcement hearing officer;
- A current or former guardian ad litem;
- A current or former investigator or inspector of the Department of Business and Professional Regulation;

⁴³ “The concept, first enacted for law enforcement decades ago, has been eclipsed by the continued advancement of available technology.” Alachua County Property Appraiser, *Survey Response* (July 25, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴⁴ FBI, *Re: Update on Department of Justice Press Release 16-1085 regarding Ardit Ferizi* (Oct. 11, 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴⁵ *Id.*

- A county tax collector;
- A current or former employee of the Department of Health;
- A current or former impaired practitioner consultant retained by an agency or whose duties result in a determination of a person's skill and safety to practice a licensed profession;
- A current or former emergency medical technician or paramedic; or
- A current or former employee of an inspector general or internal audit department.⁴⁶

In its public necessity statement, the Legislature notes:

Requiring these personnel prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs The burden on an agency . . . adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public record exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information Such inconsistencies among public record exemptions reduce accuracy and efficiency when redacting exempt information It is not in the public interest for the public to receive inaccurately redacted information.⁴⁷

Currently, in addition to the servicemember exemption the only remaining requirement of reasonable efforts applies to an exemption for a current or former United States attorney, assistant United States attorney, judge of the United States Court of Appeal, United States district judge, or United States magistrate.⁴⁸

Other Exemptions

Part of the OGSR requires a review of other exemptions that may protect the same public record or meeting, and consideration of whether multiple exemptions may be merged. While it is possible that portions of information may be protected if a servicemember qualifies under another exemption, for example if the servicemember works in law enforcement⁴⁹, s. 119.071(5)(k), F.S., uniquely protects the identifying and location information of servicemembers and their families. Additionally, no other exemption would be appropriate for merging. Therefore, the information and application of this exemption is not duplicated elsewhere in law, nor can it be merged with another exemption.

III. Effect of Proposed Changes:

The public necessity statement for the original exemption provides as justification that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized.

⁴⁶ Chapter 2017-66, L.O.F.

⁴⁷ *Id.*

⁴⁸ Section 119.071(5)(i), F.S.

⁴⁹ Section 119.071(4)(d), F.S., provides a public records exemption for home addresses, phone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel.

Based on information received from the FBI, that concern has not lifted. Therefore, the bill reenacts the public record exemption for servicemembers and their families.

Additionally, the bill expands the exemption by removing the requirement that a servicemember provide a statement that reasonable efforts have been made to otherwise protect the information. Removing this requirement reflects concerns expressed by survey respondents in how to define a reasonable effort and is also consistent with the wholesale change that the Legislature made in 2017 in deleting the requirement of reasonable efforts from most other exemptions.

Although some survey respondents also requested that the Legislature expand the exemption to all servicemembers, the bill does not do so, as the intended target of the threat appears to continue to apply to servicemembers who served after September 11, 2001.⁵⁰

The public necessity statement provides that exempting servicemembers' identifying information is required to protect the servicemembers from targeted threats made by terrorist groups.

The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote of each house of the Legislature is needed for it to pass.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. Because the bill expands the public records exemption to include identification and location information for certain servicemembers and their families regardless of the servicemember's efforts to protect such information, a two-thirds vote is required for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity

⁵⁰ FBI, *supra* note 40.

justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption which supports the public policy of the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information of servicemembers contained in a record held by government agencies from use by terrorist groups. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The agencies will continue to incur costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute revises the public necessity statement to explain that the exemption is meant to thwart targeted threats on servicemembers from terrorist groups.

- B. **Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;
and Military and Veterans Affairs and Space

585-02219-20

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., which
4 provides a public records exemption for the
5 identification and location information of
6 servicemembers and the spouses and dependents of
7 servicemembers; expanding the exemption by removing
8 the requirement that a servicemember submit a written
9 statement that reasonable efforts have been made to
10 protect the information in order to claim the
11 exemption; providing for future legislative review and
12 repeal of the exemption; providing a statement of
13 public necessity; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraph (k) of subsection (5) of section
18 119.071, Florida Statutes, is amended to read:
19 119.071 General exemptions from inspection or copying of
20 public records.—
21 (5) OTHER PERSONAL INFORMATION.—
22 (k)1. For purposes of this paragraph, the term:
23 a. "Identification and location information" means the:
24 (I) Home address, telephone number, and date of birth of a
25 servicemember, and the telephone number associated with a
26 servicemember's personal communication device.
27 (II) Home address, telephone number, date of birth, and
28 place of employment of the spouse or dependent of a
29 servicemember, and the telephone number associated with such

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

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30 spouse's or dependent's personal communication device.
31 (III) Name and location of a school attended by the spouse
32 of a servicemember or a school or day care facility attended by
33 a dependent of a servicemember.
34 b. "Servicemember" means a current or former member of the
35 Armed Forces of the United States, a reserve component of the
36 Armed Forces of the United States, or the National Guard, who
37 served after September 11, 2001.
38 2. Identification and location information held by an
39 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the
40 State Constitution if a servicemember submits to an agency that
41 has custody of the identification and location information+
42 ~~a-~~ a written request to exempt the identification and
43 location information from public disclosure, ~~and~~
44 ~~b. A written statement that he or she has made reasonable~~
45 ~~efforts to protect the identification and location information~~
46 ~~from being accessible through other means available to the~~
47 ~~public.~~
48 3. This exemption applies to identification and location
49 information held by an agency before, on, or after the effective
50 date of this exemption.
51 4. This paragraph is subject to the Open Government Sunset
52 Review Act in accordance with s. 119.15 and shall stand repealed
53 on October 2, 2025 ~~2020~~, unless reviewed and saved from repeal
54 through reenactment by the Legislature.
55 Section 2. The Legislature finds that it is a public
56 necessity to make identification and location information of
57 current or former members of the Armed Forces of the United
58 States, a reserve component of the Armed Forces of the United

Page 2 of 3

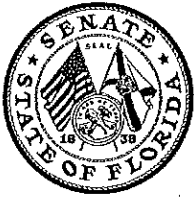
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59 States, or the National Guard, who served after September 11,
60 2001, and their spouses and dependents, exempt from s.
61 119.07(1), Florida Statutes, and s. 24(a), Article I of the
62 State Constitution, regardless of whether such individuals made
63 reasonable efforts to protect such information from being
64 public. Servicemembers perform among the most critical, most
65 effective, and most dangerous operations in defense of our
66 nation's freedom. Terrorist groups continue to threaten
67 servicemembers and their families and encourage terrorist
68 sympathizers to harm servicemembers and their families within
69 the United States. The Legislature finds that allowing public
70 access to the identification and location information of current
71 or former servicemembers and their families jeopardizes the
72 safety of servicemembers, their spouses, and their dependents.
73 The Legislature finds that protecting the safety and security of
74 current or former members of the Armed Forces of the United
75 States, a reserve component of the Armed Forces of the United
76 States, or the National Guard, who served after September 11,
77 2001, and their spouses and dependents, outweighs any public
78 benefit that may be derived from the public disclosure of the
79 identification and location information.

80 Section 3. This act shall take effect October 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

January 14, 2020

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 7010 – OGSR/ Servicemembers and the Spouses and Dependents of
Servicemembers

Dear Chair Benacquisto:

Senate Bill 7010, relating to OGSR/ Servicemembers and the Spouses and Dependents of
Servicemembers has been referred to the Committee on Rules. I am requesting your
consideration on placing SB 7010 on your next agenda. Should you need any additional
information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:

- 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20

Meeting Date

SB 7010

Bill Number (if applicable)

Topic Spouses of Servicemembers

Amendment Barcode (if applicable)

Name Sabrina Sandifer - White

Job Title IT Specialist

Address 5422e VIKKI Rd

Phone 904 879-7461

Street

Callahan

FL

32011

Email

City

State

Zip

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 248

INTRODUCER: Senator Hooper

SUBJECT: Public Records/County Attorneys and Assistant County Attorneys

DATE: January 27, 2020

REVISED: _____

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

I. Summary:

SB 248 exempts from public inspection and copying certain information held by an agency that could identify or locate current or former county attorneys or assistant county attorneys and their spouses and children.

A county attorney is selected by the board of county commissioners and provides legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. The county attorney also drafts and reviews contracts and initiates and defends civil actions in court on behalf of the county.

The bill exempts from public disclosure the following information that relates to current or former county attorneys or assistant county attorneys:

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

The bill provides a statement of public necessity as required by the State Constitution.

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

The bill takes effect July 1, 2020.

II. Present Situation:

Public Records Law

Overview

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

Legislative and Judicial Records

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

Definition

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ 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” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

Access

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Exemptions

The Legislature, alone, has the authority to create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose 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;¹²
- 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;¹³ or
- It protects trade or business secrets.¹⁴

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

“Confidential and Exempt” or “Exempt” Designations

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁷ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁸

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² Section 119.15(6)(b)1., F.S.

¹³ Section 119.15(6)(b)2., F.S.

¹⁴ Section 119.15(6)(b)3., F.S.

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., art. I, s. 24(c) and FLA. CONST., art., X, s. 12(e).

¹⁷ If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁹ with specified exceptions.²⁰ It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²²

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²³

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁴ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁵

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁶ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of

¹⁹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

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

²³ Section 119.071(4)(a) and (b), F.S.

²⁴ Section 119.071(4)(a)1., F.S.

²⁵ Section 119.071(4)(a), F.S.

²⁶ Section 119.071(5)(a)5., F.S.

that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.²⁷

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.²⁸

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.²⁹

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.³⁰ Additionally, all of these exemptions have retroactive application.³¹

County Attorneys and Assistant County Attorneys

A county attorney is selected by the board of county commissioners to serve as the chief legal counsel for the county. The county attorney is authorized to appoint assistant attorneys to help in the performance of the duties and in the administration of the office. County attorneys provide legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. They also draft and review contracts and ordinances and initiate and defend civil actions on behalf of the county in state and federal court.

Because county attorneys are often tasked with, or directly involved in, firing disgruntled employees, prosecuting code enforcement violations, and resolving other controversial matters involving the use of someone's land or the removal of animals for suspected neglect and abuse, they find themselves in difficult and emotionally-inflamed situations. Instances have been reported in which persons who felt that they were mistreated by the county attorney or who were angry with an outcome retaliated. Forms of retaliation included attempts to confront the attorney away from the office, posts of personal identifying information on social media in an effort to intimidate the attorney, and threats issued in person and online. As a result of one reported

²⁷ Section 119.071(5)(a)5.f. and g., F.S.

²⁸ Section 119.071(4)(b)1., F.S.

²⁹ Section 119.071(4)(b)2., F.S.

³⁰ Section 119.071(4)(d)3., F.S.

³¹ Section 119.071(4)(d)5., F.S.

instance, a law enforcement officer escorted a threatened county attorney for extended periods of time to ensure his protection while traveling to meetings and hearings.³²

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2., F.S., to exempt certain information pertaining to current or former county attorneys or assistant county attorneys from the public disclosure requirements of the public record laws. The following information for a current or former county attorney or assistant county attorney will be exempt:

- The county attorney or assistant county attorney's home addresses, telephone numbers, date of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the attorney's spouse and children.
- The names and locations of schools and day care facilities attended by the attorney's children.

Pursuant to subparagraph 5., this exemption will apply to information held by an agency before, on, or after July 1, 2020.

Pursuant to subparagraph 6., this exemption will be subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

Section 2 contains the public necessity statement which explains why the exemption is necessary. The public necessity statement provides that the release of the personal identifying and location information could place current or former county attorneys or assistant county attorneys in danger of being physically and emotionally harmed or stalked by a defendant or other person. Accordingly, the statement asserts that the harm that may result from releasing the information outweighs any public benefit that may be realized from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

³² Telephone interviews with the Florida Association of County Attorneys in Tallahassee, the Charlotte County Attorney's Office in Port Charlotte, and the St. Johns County Attorney in St. Augustine (October 30, 2019).

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

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for final passage of a bill creating an exemption to the public records requirements.³³

Because this bill creates an exemption for current or former county attorneys or assistant county attorneys, it requires a two-thirds vote of each house to be enacted.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement notes that this exemption is necessary to protect current or former county attorneys or assistant county attorneys and their families from being physically and emotionally harmed or stalked and is narrowly drawn to protect them. For this reason, the exemption does not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

³³ Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a “Vote or other action of a legislative house . . . means the vote or action of a majority or other specified percentage of those members voting on the matter.” Accordingly, this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.

B. Private Sector Impact:

An individual or business that requests location information that is covered by the definition of “home address” in the bill will not be able to readily obtain that information from the records custodian. If the employee or the employee’s agency has taken the initiative and requested that the home address information be exempted from disclosure, the protected person will need to sign a waiver granting permission to the records custodian to release the information to the requestor.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on agencies that hold identifying information exempted by this bill. The agencies may need to train staff in order for them to be able to comply with public records requests and perform any necessary redactions before releasing a record. However, the costs could be absorbed by the agencies as part of their day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the *5th* year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the *4th* year after enactment instead of the *5th* year. It can be reasoned, however, that advancing the scheduled review and repeal by one year is not problematic because the deviation is supported by the reasoning that a previous Legislature cannot bind this Legislature.

VIII. Statutes Affected:

This bill substantially amends section 119.071, Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Hooper

16-00442-20

2020248__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of current and former county
 6 attorneys and assistant county attorneys and the names
 7 and personal identifying and location information of
 8 the spouses and children of such attorneys; providing
 9 a statement of public necessity; providing an
 10 effective date.
 11
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term:
 21 a. "Home addresses" means the dwelling location at which an
 22 individual resides and includes the physical address, mailing
 23 address, street address, parcel identification number, plot
 24 identification number, legal property description, neighborhood
 25 name and lot number, GPS coordinates, and any other descriptive
 26 property information that may reveal the home address.
 27 b. "Telephone numbers" includes home telephone numbers,
 28 personal cellular telephone numbers, personal pager telephone
 29 numbers, and telephone numbers associated with personal

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30 communications devices.
 31 2.a. The home addresses, telephone numbers, dates of birth,
 32 and photographs of active or former sworn law enforcement
 33 personnel or of active or former civilian personnel employed by
 34 a law enforcement agency, including correctional and
 35 correctional probation officers, personnel of the Department of
 36 Children and Families whose duties include the investigation of
 37 abuse, neglect, exploitation, fraud, theft, or other criminal
 38 activities, personnel of the Department of Health whose duties
 39 are to support the investigation of child abuse or neglect, and
 40 personnel of the Department of Revenue or local governments
 41 whose responsibilities include revenue collection and
 42 enforcement or child support enforcement; the names, home
 43 addresses, telephone numbers, photographs, dates of birth, and
 44 places of employment of the spouses and children of such
 45 personnel; and the names and locations of schools and day care
 46 facilities attended by the children of such personnel are exempt
 47 from s. 119.07(1) and s. 24(a), Art. I of the State
 48 Constitution.
 49 b. The home addresses, telephone numbers, dates of birth,
 50 and photographs of current or former nonsworn investigative
 51 personnel of the Department of Financial Services whose duties
 52 include the investigation of fraud, theft, workers' compensation
 53 coverage requirements and compliance, other related criminal
 54 activities, or state regulatory requirement violations; the
 55 names, home addresses, telephone numbers, dates of birth, and
 56 places of employment of the spouses and children of such
 57 personnel; and the names and locations of schools and day care
 58 facilities attended by the children of such personnel are exempt

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59 from s. 119.07(1) and s. 24(a), Art. I of the State
60 Constitution.

61 c. The home addresses, telephone numbers, dates of birth,
62 and photographs of current or former nonsworn investigative
63 personnel of the Office of Financial Regulation's Bureau of
64 Financial Investigations whose duties include the investigation
65 of fraud, theft, other related criminal activities, or state
66 regulatory requirement violations; the names, home addresses,
67 telephone numbers, dates of birth, and places of employment of
68 the spouses and children of such personnel; and the names and
69 locations of schools and day care facilities attended by the
70 children of such personnel are exempt from s. 119.07(1) and s.
71 24(a), Art. I of the State Constitution.

72 d. The home addresses, telephone numbers, dates of birth,
73 and photographs of current or former firefighters certified in
74 compliance with s. 633.408; the names, home addresses, telephone
75 numbers, photographs, dates of birth, and places of employment
76 of the spouses and children of such firefighters; and the names
77 and locations of schools and day care facilities attended by the
78 children of such firefighters are exempt from s. 119.07(1) and
79 s. 24(a), Art. I of the State Constitution.

80 e. The home addresses, dates of birth, and telephone
81 numbers of current or former justices of the Supreme Court,
82 district court of appeal judges, circuit court judges, and
83 county court judges; the names, home addresses, telephone
84 numbers, dates of birth, and places of employment of the spouses
85 and children of current or former justices and judges; and the
86 names and locations of schools and day care facilities attended
87 by the children of current or former justices and judges are

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88 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
89 Constitution.

90 f. The home addresses, telephone numbers, dates of birth,
91 and photographs of current or former state attorneys, assistant
92 state attorneys, statewide prosecutors, or assistant statewide
93 prosecutors; the names, home addresses, telephone numbers,
94 photographs, dates of birth, and places of employment of the
95 spouses and children of current or former state attorneys,
96 assistant state attorneys, statewide prosecutors, or assistant
97 statewide prosecutors; and the names and locations of schools
98 and day care facilities attended by the children of current or
99 former state attorneys, assistant state attorneys, statewide
100 prosecutors, or assistant statewide prosecutors are exempt from
101 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

102 g. The home addresses, dates of birth, and telephone
103 numbers of general magistrates, special magistrates, judges of
104 compensation claims, administrative law judges of the Division
105 of Administrative Hearings, and child support enforcement
106 hearing officers; the names, home addresses, telephone numbers,
107 dates of birth, and places of employment of the spouses and
108 children of general magistrates, special magistrates, judges of
109 compensation claims, administrative law judges of the Division
110 of Administrative Hearings, and child support enforcement
111 hearing officers; and the names and locations of schools and day
112 care facilities attended by the children of general magistrates,
113 special magistrates, judges of compensation claims,
114 administrative law judges of the Division of Administrative
115 Hearings, and child support enforcement hearing officers are
116 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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117 Constitution.

118 h. The home addresses, telephone numbers, dates of birth,

119 and photographs of current or former human resource, labor

120 relations, or employee relations directors, assistant directors,

121 managers, or assistant managers of any local government agency

122 or water management district whose duties include hiring and

123 firing employees, labor contract negotiation, administration, or

124 other personnel-related duties; the names, home addresses,

125 telephone numbers, dates of birth, and places of employment of

126 the spouses and children of such personnel; and the names and

127 locations of schools and day care facilities attended by the

128 children of such personnel are exempt from s. 119.07(1) and s.

129 24(a), Art. I of the State Constitution.

130 i. The home addresses, telephone numbers, dates of birth,

131 and photographs of current or former code enforcement officers;

132 the names, home addresses, telephone numbers, dates of birth,

133 and places of employment of the spouses and children of such

134 personnel; and the names and locations of schools and day care

135 facilities attended by the children of such personnel are exempt

136 from s. 119.07(1) and s. 24(a), Art. I of the State

137 Constitution.

138 j. The home addresses, telephone numbers, places of

139 employment, dates of birth, and photographs of current or former

140 guardians ad litem, as defined in s. 39.820; the names, home

141 addresses, telephone numbers, dates of birth, and places of

142 employment of the spouses and children of such persons; and the

143 names and locations of schools and day care facilities attended

144 by the children of such persons are exempt from s. 119.07(1) and

145 s. 24(a), Art. I of the State Constitution.

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146 k. The home addresses, telephone numbers, dates of birth,

147 and photographs of current or former juvenile probation

148 officers, juvenile probation supervisors, detention

149 superintendents, assistant detention superintendents, juvenile

150 justice detention officers I and II, juvenile justice detention

151 officer supervisors, juvenile justice residential officers,

152 juvenile justice residential officer supervisors I and II,

153 juvenile justice counselors, juvenile justice counselor

154 supervisors, human services counselor administrators, senior

155 human services counselor administrators, rehabilitation

156 therapists, and social services counselors of the Department of

157 Juvenile Justice; the names, home addresses, telephone numbers,

158 dates of birth, and places of employment of spouses and children

159 of such personnel; and the names and locations of schools and

160 day care facilities attended by the children of such personnel

161 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

162 Constitution.

163 l. The home addresses, telephone numbers, dates of birth,

164 and photographs of current or former public defenders, assistant

165 public defenders, criminal conflict and civil regional counsel,

166 and assistant criminal conflict and civil regional counsel; the

167 names, home addresses, telephone numbers, dates of birth, and

168 places of employment of the spouses and children of current or

169 former public defenders, assistant public defenders, criminal

170 conflict and civil regional counsel, and assistant criminal

171 conflict and civil regional counsel; and the names and locations

172 of schools and day care facilities attended by the children of

173 current or former public defenders, assistant public defenders,

174 criminal conflict and civil regional counsel, and assistant

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175 criminal conflict and civil regional counsel are exempt from s.
 176 119.07(1) and s. 24(a), Art. I of the State Constitution.

177 m. The home addresses, telephone numbers, dates of birth,
 178 and photographs of current or former investigators or inspectors
 179 of the Department of Business and Professional Regulation; the
 180 names, home addresses, telephone numbers, dates of birth, and
 181 places of employment of the spouses and children of such current
 182 or former investigators and inspectors; and the names and
 183 locations of schools and day care facilities attended by the
 184 children of such current or former investigators and inspectors
 185 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 186 Constitution.

187 n. The home addresses, telephone numbers, and dates of
 188 birth of county tax collectors; the names, home addresses,
 189 telephone numbers, dates of birth, and places of employment of
 190 the spouses and children of such tax collectors; and the names
 191 and locations of schools and day care facilities attended by the
 192 children of such tax collectors are exempt from s. 119.07(1) and
 193 s. 24(a), Art. I of the State Constitution.

194 o. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former personnel of the Department
 196 of Health whose duties include, or result in, the determination
 197 or adjudication of eligibility for social security disability
 198 benefits, the investigation or prosecution of complaints filed
 199 against health care practitioners, or the inspection of health
 200 care practitioners or health care facilities licensed by the
 201 Department of Health; the names, home addresses, telephone
 202 numbers, dates of birth, and places of employment of the spouses
 203 and children of such personnel; and the names and locations of

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

207 p. The home addresses, telephone numbers, dates of birth,
 208 and photographs of current or former impaired practitioner
 209 consultants who are retained by an agency or current or former
 210 employees of an impaired practitioner consultant whose duties
 211 result in a determination of a person's skill and safety to
 212 practice a licensed profession; the names, home addresses,
 213 telephone numbers, dates of birth, and places of employment of
 214 the spouses and children of such consultants or their employees;
 215 and the names and locations of schools and day care facilities
 216 attended by the children of such consultants or employees are
 217 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 218 Constitution.

219 q. The home addresses, telephone numbers, dates of birth,
 220 and photographs of current or former emergency medical
 221 technicians or paramedics certified under chapter 401; the
 222 names, home addresses, telephone numbers, dates of birth, and
 223 places of employment of the spouses and children of such
 224 emergency medical technicians or paramedics; and the names and
 225 locations of schools and day care facilities attended by the
 226 children of such emergency medical technicians or paramedics are
 227 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 228 Constitution.

229 r. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former personnel employed in an
 231 agency's office of inspector general or internal audit
 232 department whose duties include auditing or investigating waste,

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 233 fraud, abuse, theft, exploitation, or other activities that
 234 could lead to criminal prosecution or administrative discipline;
 235 the names, home addresses, telephone numbers, dates of birth,
 236 and places of employment of spouses and children of such
 237 personnel; and the names and locations of schools and day care
 238 facilities attended by the children of such personnel are exempt
 239 from s. 119.07(1) and s. 24(a), Art. I of the State
 240 Constitution.

241 s. The home addresses, telephone numbers, dates of birth,
 242 and photographs of current or former directors, managers,
 243 supervisors, nurses, and clinical employees of an addiction
 244 treatment facility; the home addresses, telephone numbers,
 245 photographs, dates of birth, and places of employment of the
 246 spouses and children of such personnel; and the names and
 247 locations of schools and day care facilities attended by the
 248 children of such personnel are exempt from s. 119.07(1) and s.
 249 24(a), Art. I of the State Constitution. For purposes of this
 250 sub-subparagraph, the term "addiction treatment facility" means
 251 a county government, or agency thereof, that is licensed
 252 pursuant to s. 397.401 and provides substance abuse prevention,
 253 intervention, or clinical treatment, including any licensed
 254 service component described in s. 397.311(26).

255 t. The home addresses, telephone numbers, dates of birth,
 256 and photographs of current or former directors, managers,
 257 supervisors, and clinical employees of a child advocacy center
 258 that meets the standards of s. 39.3035(1) and fulfills the
 259 screening requirement of s. 39.3035(2), and the members of a
 260 Child Protection Team as described in s. 39.303 whose duties
 261 include supporting the investigation of child abuse or sexual

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 262 abuse, child abandonment, child neglect, and child exploitation
 263 or to provide services as part of a multidisciplinary case
 264 review team; the names, home addresses, telephone numbers,
 265 photographs, dates of birth, and places of employment of the
 266 spouses and children of such personnel and members; and the
 267 names and locations of schools and day care facilities attended
 268 by the children of such personnel and members are exempt from s.
 269 119.07(1) and s. 24(a), Art. I of the State Constitution.

270 u. The home addresses, telephone numbers, dates of birth,
 271 and photographs of current or former county attorneys or
 272 assistant county attorneys; the names, home addresses, telephone
 273 numbers, photographs, dates of birth, and places of employment
 274 of the spouses and children of current or former county
 275 attorneys or assistant county attorneys; and the names and
 276 locations of schools and day care facilities attended by the
 277 children of current or former county attorneys or assistant
 278 county attorneys are exempt from s. 119.07(1) and s. 24(a), Art.
 279 I of the State Constitution.

280 3. An agency that is the custodian of the information
 281 specified in subparagraph 2. and that is not the employer of the
 282 officer, employee, justice, judge, or other person specified in
 283 subparagraph 2. shall maintain the exempt status of that
 284 information only if the officer, employee, justice, judge, other
 285 person, or employing agency of the designated employee submits a
 286 written request for maintenance of the exemption to the
 287 custodial agency.

288 4. An officer, an employee, a justice, a judge, or other
 289 person specified in subparagraph 2. may submit a written request
 290 for the release of his or her exempt information to the

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 291 custodial agency. The written request must be notarized and must
 292 specify the information to be released and the party that is
 293 authorized to receive the information. Upon receipt of the
 294 written request, the custodial agency shall release the
 295 specified information to the party authorized to receive such
 296 information.

297 5. The exemptions in this paragraph apply to information
 298 held by an agency before, on, or after the effective date of the
 299 exemption.

300 6. This paragraph is subject to the Open Government Sunset
 301 Review Act in accordance with s. 119.15 and shall stand repealed
 302 on October 2, 2024, unless reviewed and saved from repeal
 303 through reenactment by the Legislature.

304 Section 2. The Legislature finds that it is a public
 305 necessity that the home addresses, dates of birth, telephone
 306 numbers, and photographs of current or former county attorneys
 307 and assistant county attorneys be made exempt from s. 119.07(1),
 308 Florida Statutes, and s. 24(a), Article I of the State
 309 Constitution. The Legislature further finds that it is a public
 310 necessity that the names, home addresses, telephone numbers,
 311 photographs, dates of birth, and places of employment of the
 312 spouses and children, and the names and locations of schools and
 313 day care facilities attended by such children, of current or
 314 former county attorneys and assistant county attorneys be made
 315 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 316 Article I of the State Constitution. The Legislature finds that
 317 the release of such personal identifying and location
 318 information could place such persons in danger of being
 319 physically and emotionally harmed or stalked by a defendant or

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 320 other person. The Legislature finds that the harm that may
 321 result from the release of such personal identifying and
 322 location information outweighs any public benefit that may be
 323 derived from the disclosure of the information.

324 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

December 9th, 2019

Honorable Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

I am writing to request that SB 248, Public Records/County Attorneys and Assistant County Attorneys, be placed on the agenda to be heard in the Rules Committee.

I appreciate your consideration in this matter.

Sincerely,

Ed Hooper

Cc: Staff Director, John B. Phelps
Administrative Assistant, Jessica Futch

REPLY TO:

- 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/29/20
Meeting Date

248
Bill Number (if applicable)

Topic _____

_____ Amendment Barcode (if applicable)

Name ~~Jasmyne Henderson~~ Jasmyne Henderson

Job Title Lobbyist

Address 1026 East Park Avenue
Street

Phone (850) 216-1002

Tallahassee Florida 32301
City State Zip

Email jasmyne@pitman-law.com

Speaking: For Against Information

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

Representing Broward County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 476

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Hooper

SUBJECT: Law Enforcement Vehicles

DATE: January 27, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Fav/CS
2. <u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3. <u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 476 provides that condominium, homeowners', and cooperative associations may not prohibit law enforcement officers who are owners, tenants, guests, or invitees of an owner to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill does not have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

II. Present Situation:

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,¹ recordkeeping requirements, including which records are accessible to the members of the association,² and

¹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

² See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

financial reporting.³ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

Condominium

A condominium is a “form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”⁴ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁵ A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.⁶

A condominium is administered by a board of directors referred to as a “board of administration.”⁷

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁸

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.⁹

³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

⁴ Section 718.103(11), F.S.

⁵ Section 718.104(2), F.S.

⁶ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁷ Section 718.103(4), F.S.

⁸ See ss. 719.106(1)(g) and 719.107, F.S.

⁹ See s. 720.302(1), F.S.

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”¹⁰ Unless specifically stated to the contrary in the articles of incorporation, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.¹¹

Homeowners’ associations are administered by a board of directors whose members are elected.¹² The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹³ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.¹⁴

Restrictive Covenants

Community associations may enact and enforce covenants as a condition for living in the association. A covenant is an agreement, or contract, which grants a right or imposes a liability. Covenants can range from requiring owners to pay a portion of the common expenses to restrictions on the age of permanent residents.¹⁵

A restrictive covenant limits the use of community association property. Restrictive covenants imposed by a community association’s declaration are valid unless they are clearly ambiguous, wholly arbitrary, or violate a public policy or a constitutional right. Restrictions imposed by a community association’s board of directors must also be reasonable.¹⁶

Community Association Fines and Suspensions

Owners, tenants, and guests must comply with a condominium, cooperative, or homeowners’ association’s (community associations) declaration, bylaws, and rules. Condominium, cooperative, and homeowners’ associations may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements or any other association property for failing to comply with any provision in the association’s governing documents. A suspension for failing to comply with the community association’s declaration, bylaws, or rules may not be for an unreasonable amount of time.¹⁷

¹⁰ Section 720.301(9), F.S.

¹¹ Section 720.302(5), F.S.

¹² See ss. 720.303 and 720.307, F.S.

¹³ See ss. 720.301 and 720.303, F.S.

¹⁴ Section 720.303(1), F.S.

¹⁵ Sections 718.104(5), 718.112(3), 719.1035, 719.106(2), 720.301(4), and 720.304(1), F.S.; Peter Dunbar, *The Condominium Concept*, 13-21 (14th ed. 2014-15).

¹⁶ *Beachwood Villas Condominium v. Poor*, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 639-40 (Fla. 3rd DCA 1981).

¹⁷ Sections 718.303, 719.303, and 720.305, F.S.

No fine may exceed \$100 per violation although a fine may be levied for each day of a continuing violation provided the fine does not exceed \$1,000. However, a fine levied by a homeowners' association may exceed \$1,000 if the governing documents authorize it. Fines levied by condominium associations and cooperatives may not become a lien on the property. Fines levied by a homeowners' association that do not exceed \$1,000 may not become a lien on the property.¹⁸

A community association may suspend an owner, tenant, or guest's ability to use the association's common elements or any other association property, if the owner is more than 90 days delinquent in paying a monetary obligation including a fine. The suspension may remain in effect until the fine is paid.¹⁹

A community association may also suspend an owner's voting rights for any monetary obligation that exceeds \$1,000 and is more than 90 days delinquent.²⁰

Commercial Vehicles

A common restrictive covenant in community associations is restricting or prohibiting the parking of certain vehicles such as commercial vehicles. However, the community association's governing documents often do not define the term "commercial vehicle," which can lead to confusion about what constitutes a commercial vehicle.²¹

Florida courts have upheld homeowners' association provisions restricting the parking of commercial when the term "commercial vehicle" has not been defined in the governing documents.²²

In June 2005, the Town of Davie requested an advisory opinion from the Florida Office of the Attorney General on the definition of commercial vehicle. Specifically, the town inquired whether a marked law enforcement vehicle is a commercial vehicle for the purposes of parking on property located in a community association. A homeowners' association within the town prohibited commercial vehicles from parking in the driveways within the association property. The association had informed an owner that a law enforcement vehicle was a commercial vehicle and could not be parked in the driveway.²³

The Attorney General determined that a law enforcement vehicle is not a commercial vehicle because a commercial vehicle is used by a business for the purpose of economic gain, and law

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Mike Antich, *Discrimination Against Vocational Vehicles*, Automotive Fleet (Dec. 22, 2017) <https://www.automotive-fleet.com/160128/discrimination-against-vocational-vehicles> (last visited Oct. 28, 2019); and Clinton Morrell, *Are law enforcement vehicles subject to Community Association "commercial vehicle" bans?*, The Condo & HOA Law Bulletin (Feb. 8, 2016) <https://thecondoandhoalawbulletin.com/2016/02/08/are-law-enforcement-vehicles-subject-to-community-association-commercial-vehicle-bans/> (last visited Nov. 26, 2019).

²² *Cottrell v. Miskove*, 605 So. 2d 572, 573 (Fla. 2nd DCA 1992) (The terms "commercial" and "vehicle" are well defined terms and when combined the term is not vague, ambiguous, or unclear.).

²³ Op. Att'y Gen. Fla. 05-36 (2005). A copy is available at: <http://www.myfloridalegal.com/ago.nsf/printview/0D1E173CAF5568FF852570220059A538> (last visited Nov. 26, 2019).

enforcement services are an integral part of government and are not provided for economic gain. The Attorney General also noted that assigning a police vehicle to an officer to drive during off-duty hours to provide a quicker response when called to an emergency is a direct benefit to the public, and the presence of a police vehicle in a neighborhood may serve as a deterrent to crime.²⁴

Recently, the media reported that a Clearwater police officer may be subject to hundreds of dollars in fines imposed by the police officer's homeowners' association if the police officer continued to park a marked police cruiser in the driveway instead of the garage.²⁵ The association's declaration prohibits owners from parking commercial and *government issued* vehicles in driveways.²⁶ According to the media reports, the association has changed its position and now lets the police officer park a marked cruiser in the driveway. However, media reports indicate that the exception only applies to that specific police officer, and all future owners with government issued vehicles may not park them in the driveways.²⁷

Law Enforcement Officer

Chapter 943, F.S., is the Department of Law Enforcement Act.²⁸ Section 943.10(1), F.S., defines the term "law enforcement officer" to mean:

[A]ny person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include support personnel employed by the employing agency.²⁹ The definition does not include part-time or auxiliary law enforcement officers themselves.³⁰

²⁴ *Id.*

²⁵ Heather Leigh, *HOA tells Clearwater officer to move her police cruiser into her garage or face legal action*, ABC Action News Tampa Bay, (Aug. 27, 2019) <https://www.abcactionnews.com/news/region-pinellas/hoa-tells-clearwater-officer-to-move-her-police-cruiser-into-her-garage-or-face-legal-action> (last visited Nov. 26, 2019); WFTS Staff, *HOA tells Florida officer to move her police cruiser off her driveway or face legal action*, News Channel 5 Nashville, Sep. 1, 2019, <https://www.newschannel5.com/news/national/hoa-tells-florida-officer-to-move-her-police-cruiser-into-off-her-driveway-or-face-legal-action> (last visited Nov. 26, 2019).

²⁶ Heather Leigh, *State leaders push for change after HOA tells Clearwater officer to move cruiser from driveway*, ABC Action News Tampa Bay, August 29, 2019 <https://www.abcactionnews.com/news/region-pinellas/state-leaders-push-for-change-after-hoa-tells-clearwater-officer-to-move-cruise-from-driveway> (last visited January 1, 2020).

²⁷ Heather Leigh, *HOA now allowing Clearwater police officer to park cruiser in driveway*, ABC Action News Tampa Bay, Sep. 11, 2019, <https://www.abcactionnews.com/news/region-pinellas/hoa-now-allowing-clearwater-police-officer-to-park-cruiser-in-driveway> (last visited Nov. 26, 2019).

²⁸ Section 943.01, F.S.

²⁹ Section 943.10(1), F.S.

³⁰ *Id.*

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.³¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.³² After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.³⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.³⁵

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.³⁶

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.], the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these

³¹ Sections 718.501(1) and 719.501(1), F.S.

³² *Id.*

³³ Section 718.501(1), F.S.

³⁴ Section 719.501(1), F.S.

³⁵ Sections 718.501(1) and 719.501(1), F.S.

³⁶ *Id.*

disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.,] are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

For homeowners' associations, the division's authority is limited to arbitration of recall election disputes.³⁷

III. Effect of Proposed Changes:

The bill provides that homeowners', condominium, and cooperative associations may not prohibit full-time law enforcement officers, as defined in s. 943.10(1), F.S., who are owners, tenants, guests, or invitees of an owner, to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

CS/SB 476 may create a conflict with the governing documents of homeowners', condominium, and cooperative associations to the extent the documents prohibit law enforcement officers, as defined in s. 943.10(1), F.S., who are owners, tenants, guests, or invitees of an owner, to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

³⁷ See s. 720.306(9)(c), F.S.

The governing documents of these associations are generally considered contracts.³⁸ To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Some contracts forego the impairment of contract analysis by incorporating the relevant governing statute for that particular type of association, including future changes. In the context of condominiums, for example, the contract may include what is referred to as the “Kaufman language,” which states that the contract or association “shall be governed by the Condominium Act, as amended from time-to-time.”³⁹ Without the Kaufman language, newly enacted statutes may only affect new association documents (or amendments to existing documents) or prior association documents in a limited manner.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.⁴⁰ The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.⁴¹ In *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.⁴² This exception extends to laws that are reasonable and necessary to serve an important public purpose,⁴³ to include protecting the public’s health, safety or welfare.⁴⁴ For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.⁴⁵

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.⁴⁶ The balancing process focuses on whether “the nature and extent of the impairment is constitutionally tolerable in light of the

³⁸ See *Venetian Isles Homeowners’ Assoc., Inc., v. Albrecht*, 823 So.2d 813 (Fla. 2nd D.C.A. 2002) and *Cudjoe Gardens Property Owners Assoc., Inc. v. Patne*, 779 So.2d 598 (Fla. 3rd D.C.A. 2001).

³⁹ See *Kaufman v. Shere*, 347 So.2d 627 (Fla. 3 DCA 1977).

⁴⁰ *Stone v. Mississippi*, 101 U.S. 814 (1880).

⁴¹ *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

⁴² *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980).

⁴³ *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

⁴⁴ *Khoury v Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981), petition den. 412 So.2d 467 (Fla. 1981).

⁴⁵ *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1st DCA 1984).

⁴⁶ *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

importance of the state’s objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”⁴⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections 718.129, 719.131, and 720.318 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Innovation, Industry, and Technology on December 9, 2019:

The committee substitute cross-references the definition of the term “law enforcement officer” in s. 943.10(1), F.S.

B. Amendments:

None.

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

⁴⁷ *Id.* at 780.

By the Committee on Innovation, Industry, and Technology; and
Senator Hooper

580-01998-20

2020476c1

1 A bill to be entitled
2 An act relating to law enforcement vehicles; creating
3 ss. 718.129, 719.131, and 720.318, F.S.; providing
4 that condominium, cooperative, and homeowners'
5 associations, respectively, may not prohibit a law
6 enforcement officer from parking his or her assigned
7 law enforcement vehicle in certain areas; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 718.129, Florida Statutes, is created to
13 read:

14 718.129 Law enforcement vehicles.—An association may not
15 prohibit a law enforcement officer, as defined in s. 943.10(1),
16 who is a unit owner, or who is a tenant, guest, or invitee of a
17 unit owner, from parking his or her assigned law enforcement
18 vehicle in an area where the unit owner, or the tenant, guest,
19 or invitee of the unit owner, otherwise has a right to park.

20 Section 2. Section 719.131, Florida Statutes, is created to
21 read:

22 719.131 Law enforcement vehicles.—An association may not
23 prohibit a law enforcement officer, as defined in s. 943.10(1),
24 who is a unit owner, or who is a tenant, guest, or invitee of a
25 unit owner, from parking his or her assigned law enforcement
26 vehicle in an area where the unit owner, or the tenant, guest,
27 or invitee of the unit owner, otherwise has a right to park.

28 Section 3. Section 720.318, Florida Statutes, is created to
29 read:

Page 1 of 2

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

580-01998-20

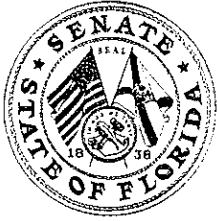
2020476c1

30 720.318 Law enforcement vehicles.—An association may not
31 prohibit a law enforcement officer, as defined in s. 943.10(1),
32 who is a parcel owner, or who is a tenant, guest, or invitee of
33 a parcel owner, from parking his or her assigned law enforcement
34 vehicle in an area where the parcel owner, or the tenant, guest,
35 or invitee of the parcel owner, otherwise has a right to park.

36 Section 4. This act shall take effect upon becoming a law.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

January 14th, 2020

Honorable Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

I am writing to request that SB 476, Law Enforcement Vehicles, be placed on the agenda to be heard in the Rules Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a white background.

Ed Hooper

Cc: Staff Director, John B. Phelps
Administrative Assistant, Cynthia Futch

REPLY TO:

- 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29

Meeting Date

476

Bill Number (if applicable)

Topic Law Enforcement Vehicles

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 77, The Capitol

Phone (850) 413-2890

Street

Tallahassee

FL

32399

City

State

Zip

Email Meredith.Stanfield@myFloridaCFO.com

Speaking: [] For [] Against [] Information

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

Representing CFO Jimmy Patronis

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 29, 2020

Meeting Date

476

Bill Number (if applicable)

Topic LEO Vehicles

Amendment Barcode (if applicable)

Name Gary Bradford

Job Title Lobbyist

Address 300 East Brevard Street

Phone 222-3329

Street

Talla

FL

32301

Email gary@flpba.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida PBA Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/29/2020
Meeting Date

SB 476
Bill Number (if applicable)

Topic Law Enforcement

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title _____

Address PO Box 390

Phone _____

Street

TLH FL 32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA Sheriff Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/29/2020

Meeting Date

SB 476

Bill Number (if applicable)

Topic Law Enforcement Vehicles

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs - Chief

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-29-20

Meeting Date

467

Bill Number (if applicable)

Topic SB 467

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title Chief Executive Officers of Management Companies

Address 110 S Monroe St

Phone 913-205-0658

Tallahassee FL 32301

Email Mark@consultanderson.com

Speaking: [] For [] Against [] Information

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

Representing Chief Executive Officers of Management Companies

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

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

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

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

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 886

INTRODUCER: Senator Powell

SUBJECT: Errors in Deeds

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Elsesser</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 886 provides that, in certain instances, a deed containing a scrivener's error in the legal description of property and subsequent deeds containing the same error may be corrected by the filing of a curative notice.

The bill defines the errors or omissions that constitute "scrivener's errors" and describes the circumstances under which such errors may be corrected by a curative notice. A curative notice corrects all deeds for the same property containing the same scrivener's error, and releases any cloud or encumbrance that an erroneous deed may have created as to other properties.

The bill takes effect July 1, 2020.

II. Present Situation:

Generally, deeds containing scrivener's errors should be reformed to reflect the true intentions of the parties.¹

The Florida Statutes do not expressly mention "corrective deeds," but courts have established a general rule of law allowing for corrective instruments conveying real property. For instance, a deed containing an incorrect description or a misspelling of names may be corrected by a subsequent instrument clearly identified as a correction deed.² Corrective deeds need not restate all material portions of the deed being corrected if such portions contain no errors.³ Corrective deeds and non-erroneous portions of original deeds are "construed together."⁴

¹ See *Burke v. Piccone*, 523 So. 2d 664, 665 (Fla. 2d DCA 1988); see also *Brown v. Brown*, 501 So. 2d 24, 26-27 (Fla. 5th DCA 1986); *Gennaro v. Leeper*, 313 So. 2d 70, 72 (Fla. 2d DCA 1975); *Jacobs v. Parodi*, 39 So. 833 (1905).

² *Golden v. Hayes*, 277 So. 2d 816, 817 (Fla. 1st DCA 1973).

³ *Id.*

⁴ *Id.*

A reformation relates back to the time the instrument was originally executed and simply corrects the document's language to read as it should have read all along.⁵ The theory of reformation on grounds of mistake is to reform the agreement to reflect what the parties would have agreed to had there been no mistake.⁶ Claims for reformation of a deed are subject to a 20-year limitations period.⁷ A party seeking reformation of a deed may seek, in the same pleading, quiet title to reflect the correct ownership.⁸

Courts have contemplated remedying alleged defects in deeds through "curative deeds,"⁹ although the term is not mentioned in the Florida Statutes.

Errors in the legal description of property, contained in a deed or mortgage existing prior to entry of the final judgment, cannot be remedied by simply amending or correcting the final judgment, but errors in the legal description of the property that occur upon entry of the final judgment itself, and did not exist in a deed or mortgage (or other document conveying or encumbering the property) prior to entry of the final judgment can be corrected through an amended or corrected judgment.¹⁰

The Florida Statutes describe instances where certain entities may amend errors in the legal description of condominium property. Section 718.110(5), F.S., allows a condominium's board of administration to file an amendment to a condominium declaration if it appears that, due to a scrivener's error, the "common elements" of the condominium have not been distributed equally in the declaration. Similarly, a "termination trustee" charged with terminating a condominium declaration may record an amended plan of termination if the trustee discovers a scrivener's error in the plan, and the amended plan must be executed in the same manner as required for the execution of a deed.¹¹

⁵ *Kartzmark v. Kartzmark*, 709 So. 2d 583, 585 (Fla.4th DCA 1998).

⁶ *Id.*; "A mistake is mutual when the parties agree to one thing and then, due to either a scrivener's error or inadvertence, express something different in the written instrument." *Circle Mortgage Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994).

⁷ Section 95.231, F.S.; *Inglis v. First Union Nat. Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001).

⁸ See, e.g., *Rigby v. Liles*, 505 So. 2d 598, 599 (Fla. 1st DCA 1987); see also s. 65.021, F.S.

⁹ See *Heartwood 2, LLC v. Dori*, 208 So. 3d 817, 822-23 (Fla. 3d DCA 2017) ("Any alleged defect in the deed into the mortgagor ... should remain for a separate action ... or a curative deed to be obtained from the grantor by consent" (Salter, J., concurring in part and dissenting in part) (emphasis added)).

¹⁰ *Baker v. Courts at Bayshore I Condominium Ass'n, Inc.*, 279 So. 3d 799, 801-02 (Fla. 2d DCA 2019) (emphasis removed); see also *Fed. Nat. Mortg. Ass'n v. Sanchez*, 187 So. 3d 341, 343 (Fla. 4th DCA 2016) (holding in such case that the trial court must first vacate the judgment, the sale and any certificates of title or sale); *Caddy v. Wells Fargo Bank, N.A.*, 198 So. 3d 1149, 1150 (Fla. 4th DCA 2016); *Wells Fargo Bank, N.A. v. Giesel*, 155 So. 3d 411, 414 (Fla. 1st DCA 2014); *Lucas v. Barnett Bank of Lee Cty.*, 705 So. 2d 115, 116 (Fla. 2d DCA 1998); *Fisher v. Villamil*, 56 So. 559, 561-62 (Fla. 1911) ("[W]hen a mortgage misdescribes the property intended to be mortgaged the mistake may be corrected by a proper proceeding before judicial foreclosure; but, if the mistake has been carried into a bill, filed for the purpose of foreclosing such mortgage, into the decree ordering foreclosure, into the advertisement, and into the deed, the purchaser at such foreclosure sale cannot maintain a bill in equity to correct the description of the land as contained in the mortgage, in the decree, and in the deed").

¹¹ Section 718.117(2)(d), F.S.

III. Effect of Proposed Changes:

The bill states that a deed containing a “scrivener’s error” conveys title to the “intended real property” as if there had been no error, and states that each subsequent erroneous deed containing the identical scrivener’s error also conveys title as if there had been no error.

The bill defines a “scrivener’s error” as a single error or omission in the legal description of the “intended real property,” i.e. the property which the grantor intended to be conveyed by the deed, that is one of the following:

- an error or omission of one lot or block identification of a recorded platted lot,¹²
- an error or omission of one unit, building, or phase identifications of a condominium or cooperative unit, or
- an error or omission in one directional designation or numerical fraction of a tract of land that is described as a fractional portion of a section, township, or range.¹³

The bill states that deeds containing scrivener’s errors convey title to the intended property as if there had been no error if:

- the grantor held record title to the intended property at the time the deed containing the scrivener’s error was executed,
- the grantor or the erroneous deed did not hold title to any other real property in the same subdivision, condominium, or cooperative development or in the same section, township, or range described in the deed containing the scrivener’s error within 5 years before the record date of that deed,
- the record property is not described exclusively as a metes and bounds legal description, and
- a curative notice evidencing the intended real property to be conveyed by the grantor is recorded in the official records of the county where the intended real property is located.

The bill provides the form for a curative notice, which requires a description of the original erroneous deed and any subsequent deeds containing the same error, a statement that the person filing the notice has confirmed, through an examination of the official county records, that the above-mentioned requirements for conveyance of title were met, and a statement that the real property described in the notice was the property intended to be conveyed by the erroneous deeds.

The bill states that circuit court clerks may accept a curative notice as evidence of a grantor’s intent to convey the intended property, and states that the corrections made by the curative notice relate back to the record date of the original erroneous deed and release any clouds or encumbrances created by the erroneous deeds as to any property other than the intended real property.

The bill states that its remedies are not exclusive and do not abrogate any other remedy under Florida law.

¹² For the purposes of the bill, transposition of lot and block identifications are considered one error.

¹³ For the purposes of the bill, an error or omission in the directional description and numerical fraction of the same call is considered one error.

The bill allows for the correction of errors meeting its definition without having to file a claim for reformation of deed or quiet title action in a court. The bill alters the rule established in case law by more clearly defining the form of a curative deed and narrowing the types of errors that constitute “scrivener’s errors” that may be corrected with a subsequent curative deed. However, because the bill states that its remedies are not exclusive, it appears that deeds containing erroneous legal descriptions of property that do not meet the bill’s definition of “scrivener’s errors” may be remedied through the current method of filing actions for reformation of deed or quiet title. The bill does not specify whether it is subject to the 20-year limitations period that pertains to traditional claims for reformation of deed.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By filing a curative notice, a property owner may be able to sufficiently clear title to property without the expenses associated with a claim for reformation of deed or a quiet title action.

C. Government Sector Impact:

The bill provides a method for correcting scrivener's errors in deeds other than by a claim of reformation of deed or quiet title, and therefore may reduce judicial labor. However, the bill will potentially result in an increase in the workloads of court clerks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 138-140 of the bill state that the court clerks "may" accept and record curative notices "as evidence of the intent of the grantor in the erroneous deed." The Legislature may wish to revise this sentence to state that the clerks "shall" accept and record the curative notices and that the notices are evidence of the intent of the grantor. As currently drafted, the language appears to give clerks discretion in deciding whether to accept a notice and a duty or authority to evaluate whether the curative notice is evidence of a grantor's intent.

VIII. Statutes Affected:

This bill creates section 689.041 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Powell

30-01022-20

2020886__

1 A bill to be entitled
 2 An act relating to errors in deeds; creating s.
 3 689.041, F.S.; defining terms; providing that a deed
 4 containing a scrivener's error conveys title as if
 5 there had been no such error if certain requirements
 6 are met; providing a form for a curative notice;
 7 authorizing the clerks of the circuit court to accept
 8 and record curative notices; providing for the
 9 operation of a curative notice; providing
 10 construction; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 689.041, Florida Statutes, is created to
 15 read:

16 689.041 Curative procedure for scrivener's errors in
 17 deeds.-

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

19 (a) "Erroneous deed" means any deed, other than a quitclaim
 20 deed, which contains a scrivener's error.

21 (b) "Intended real property" means the real property vested
 22 in the grantor and intended to be conveyed by the grantor in the
 23 erroneous deed.

24 (c) "Scrivener's error" means a single error or omission in
 25 the legal description of the intended real property in no more
 26 than one of the following categories:

27 1. An error or omission in no more than one of the lot or
 28 block identifications of a recorded platted lot; however, the
 29 transposition of the lot and block identifications is considered

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30 one error for the purposes of this subparagraph;

31 2. An error or omission in no more than one of the unit,
 32 building, or phase identifications of a condominium or
 33 cooperative unit; or

34 3. An error or omission in no more than one directional
 35 designation or numerical fraction of a tract of land that is
 36 described as a fractional portion of a section, township, or
 37 range; however, an error or omission in the directional
 38 description and numerical fraction of the same call is
 39 considered one error for the purposes of this subparagraph.

40
 41 The term "scrivener's error" does not include any error in a
 42 document that contains multiple errors.

43 (2) A deed that contains a scrivener's error conveys title
 44 to the intended real property as if there had been no
 45 scrivener's error, and, likewise, each subsequent erroneous deed
 46 containing the identical scrivener's error conveys title to the
 47 intended real property as if there had been no such error if all
 48 of the following apply:

49 (a) Record title to the intended real property was held by
 50 the grantor of the first erroneous deed at the time the first
 51 erroneous deed was executed.

52 (b) Within the 5 years before the record date of the
 53 erroneous deed, the grantor of any erroneous deed did not hold
 54 title to any other real property in the same subdivision,
 55 condominium, or cooperative development or in the same section,
 56 township, and range, described in the erroneous deed.

57 (c) The intended real property is not described exclusively
 58 by a metes and bounds legal description.

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59 (d) A curative notice is recorded in the official records
 60 of the county in which the intended real property is located
 61 which evidences the intended real property to be conveyed by the
 62 grantor.

63 (3) A curative notice must be in substantially the
 64 following form:

65 Curative Notice, Per Sec. 95.2311, F.S.
 66 Scrivener's Error in Legal Description

67 The undersigned does hereby swear and affirm:

70
 71 1. The deed which transferred title from ...(Insert
 72 Name)... to ...(Insert Name)... on ...(Date)... and recorded on
 73 ...(Record Date)... in O.R. Book ..., Page ..., and/or
 74 Instrument No. ..., of the official records of ...(Name of
 75 County)..., Florida, (hereinafter referred to as "first
 76 erroneous deed") contained the following erroneous legal
 77 description:

78 ...(Insert Erroneous Legal Description)...

81 2. The deed transferring title from ...(Insert Name)... to
 82 ...(Insert Name)... and recorded on ...(Record Date)... in O.R.
 83 Book ..., Page ..., and/or Instrument No. ..., of the
 84 official records of ...(Name of County)..., Florida, contains
 85 the same erroneous legal description described in the first
 86 erroneous deed.

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88 ...(Insert and repeat paragraph 2. as necessary to include
 89 each subsequent erroneous deed in the chain of title containing
 90 the same erroneous legal description)...
 91

92 3. I have examined the official records of the county in
 93 which the intended real property is located and have determined
 94 that the deed dated ...(Date)..., and recorded on ...(Record
 95 Date)... in O.R. Book ..., Page ... and/or Instrument No.
 96 ..., official records of ...(Name of County)..., Florida,
 97 establishes that record title to the intended real property was
 98 held by the grantor of the first erroneous deed at the time the
 99 first erroneous deed was executed.

100
 101 4. I have examined or have had someone else examine the
 102 official records of ...(Name of County)..., Florida, and certify
 103 that:

104 a. Record title to the intended real property was held by
 105 the grantor of the first erroneous deed, ...(Insert Name)..., at
 106 the time that deed was executed.

107 b. The grantor of the first erroneous deed and the grantors
 108 of any subsequent erroneous deeds listed above did not hold
 109 record title to any property other than the intended real
 110 property in either the same subdivision, condominium or
 111 cooperative or the same section, township and range, if
 112 described in this manner, at any time within the 5 years before
 113 the date that the erroneous deed was executed.

114 c. The intended real property is not described by a metes
 115 and bounds legal description.

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117 5. This notice is made to establish that the real property
118 described as ...(insert legal description of the intended real
119 property)... (hereinafter referred to as the "intended real
120 property") was the real property that was intended to be
121 conveyed in the first erroneous deed and all subsequent
122 erroneous deeds.

123
124 ...(Signature)...
125 ...(Printed Name)...
126
127

128 Sworn to (or affirmed) and subscribed before me this
129 day of, ...(year)..., by ...(name of person making
130 statement)....

131 ...(Signature of Notary Public - State of Florida)...
132 ...(Print, Type, or Stamp Commissioned Name of Notary
133 Public)...
134

135 Personally Known OR Produced Identification
136 Type of Identification Produced.....
137

138 (4) The clerks of the circuit court for the circuit in
139 which any intended real property is located may accept and
140 record curative notices in the form described in subsection (3)
141 as evidence of the intent of the grantor in the erroneous deed
142 to convey the intended real property to the grantee in the
143 erroneous deed.

144 (5) A curative notice recorded pursuant to this section
145 operates as a correction of the first erroneous deed and all

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146 subsequent erroneous deeds containing the same scrivener's error
147 described in the curative notice and releases any cloud or
148 encumbrance that any of the erroneous deeds may have created as
149 to any property other than the intended real property. The
150 correction relates back to the record date of the first
151 erroneous deed.

152 (6) The remedies under this section are not exclusive and
153 do not abrogate any right or remedy under the laws of this state
154 other than this section.

155 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 14, 2020

I respectfully request that **Senate Bill #886**, relating to Errors in Deeds, be placed on the:

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

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

Senator Bobby Powell
Florida Senate, District 30

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: SM 978

INTRODUCER: Senator Pizzo

SUBJECT: Juneteenth Independence Day

DATE: January 27, 2020

REVISED: _____

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

I. Summary:

SM 978 is a memorial to the Congress of the United States urging Congress to recognize June 19, 2020, as “Juneteenth Independence Day.” This day commemorates the day in 1865 when many slaves in Texas were informed that the Civil War had ended and that slavery was defeated. The term “Juneteenth” is a blending of the words “June” and “nineteenth.”

II. Present Situation:

Juneteenth

Union Army Major-General Gordon Granger arrived in Galveston, Texas, on June 19, 1865, and officially declared that slavery had ended.¹ He read General Order No. 3 aloud to the people of Texas informing them that,

[I]n accordance with a proclamation from the Executive of the United States, all slaves are free. This involves an absolute equality of personal rights and rights of property between former masters and slaves, and the connection heretofore existing between them becomes that between employer and hired labor.²

The announcement produced “joyful displays by Texas freedmen.”³ The following year, on June 19, 1866, annual commemorative celebrations began and have continued, somewhat sporadically, throughout the years. The early Juneteenth celebrations often involved prayer

¹ James Alex Baggett, Texas State Historical Association, *Gordon Granger*, <https://tshaonline.org/handbook/online/articles/fgr10>.

² Texas State Library and Archives Commission, *Texas Remembers: Juneteenth*, <https://www.tsl.texas.gov/ref/abouttx/juneteenth.html>.

³ Baggett, *supra*, note 1.

services, inspirational messages, readings of President Lincoln’s Emancipation Proclamation, stories told by former slaves, food, and dances. The celebrations in Texas soon spread to neighboring states.⁴

The Emancipation Proclamation, which was issued on January 1, 1863, declared that “all persons held as slaves within any State or designated part of a State . . . in rebellion against the United States, shall be then, thenceforward, and forever free.”⁵

The broader Juneteenth celebrations initially served as political rallies and were used to teach African Americans about voting rights.⁶ Unfortunately, during the period of Jim Crow laws, Juneteenth celebrations decreased. However, during the civil rights movement, the Poor People’s March in Washington, D.C., was specifically scheduled for June 19, 1968.⁷ The march brought Juneteenth back to the public’s attention and the holiday was essentially reborn.⁸

Legislation

Although Juneteenth is recognized in some capacity by most states, it is not a national holiday. In 1980, Texas became the first state to declare Juneteenth a state holiday.⁹ It is estimated that 46 states and the District of Columbia officially recognize Juneteenth as a holiday or day of observance.¹⁰ In 1991, the Florida Legislature designated June 19th of each year as “Juneteenth Day” to commemorate the traditional observance of the day the slaves in Florida were notified of the Emancipation Proclamation.¹¹

Observances and Ceremonies

National and Patriotic Observances and Ceremonies are contained in Title 36 of the United States Code. There are approximately forty-five patriotic and national observances specified by the United States Code, ranging from American Heart Month to Veterans Day.¹² These observances designate a certain day or time period for observation and request that the president issue a proclamation calling for appropriate observance and ceremony.¹³

Senate Memorial

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a

⁴ Texas State Library and Archives Commission, *supra*, note 2.

⁵ National Archives, Transcript of the Proclamation, January 1, 1863, A Transcription, <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html>.

⁶ Teresa Palomo Acosta, *Juneteenth*, <https://tshaonline.org/handbook/online/articles/lkj01>.

⁷ Encyclopaedia Britannica, *Poor People’s Campaign*, <https://www.britannica.com/topic/Poor-Peoples-March>.

⁸ Stacy Conratt, *12 Things You Might Not Know About Juneteenth*, <https://www.mentalfloss.com/article/501680/12-things-you-might-not-know-about-juneteenth>.

⁹ *Id.*

¹⁰ Doug Criss, CNN, *All But Four US States Celebrate Juneteenth as a Holiday*, (June 19, 2019) <https://www.cnn.com/2019/06/19/us/juneteenth-state-holidays-trnd/index.html>.

¹¹ Ch. 1991-252, s. 1, Laws of Fla. and s. 683.21, F.S.

¹² See 36 U.S.C. ss. 101-145 (2019).

¹³ See, e.g., 36 U.S.C. s 109 Father’s Day (2019).

matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto. Memorials often express the Legislature's desire that Congress take action on a certain matter or request that Congress propose an amendment to the United States Constitution.¹⁴

III. Effect of Proposed Changes:

The Senate Memorial urges Congress to recognize June 19, 2020, as "Juneteenth Independence Day." The memorial directs the Secretary of State to dispatch copies to the Majority Leader of the United States Senate, the Speaker of the House of Representatives, and each member of the Florida delegation to the United States Congress.

The memorial recounts that on June 19, 1865, federal authorities arrived in Galveston, Texas, and informed slaves that the Civil War had ended and that enslaved people were free. Following emancipation, former slaves and their descendants commemorated each June 19 as the day that slaves became aware of their emancipation and celebrated their new freedom. The memorial notes that in 1991, Florida officially designated June 19 of each year as "Juneteenth Day" to commemorate the freeing of slaves within the state.

The memorial urges Congress to recognize June 19, 2020, as "Juneteenth Independence Day." Senate Resolution 253, House Resolution 448, and House Resolution 450 have been filed for the 2019-2020 session by members of the Texas Congressional Delegation expressing similar support.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁴Office of Bill Drafting Services, *Manual for Drafting Legislation*, The Florida Senate, at 137-138. (2009), available at <http://intranet.flsenate.gov/Document?filePath=/Publications%20and%20Forms/Publications/&fileName=Bill%20Drafting%20Manual.pdf>.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Pizzo

38-01064-20

2020978__

Senate Memorial

A memorial to the Congress of the United States,
urging Congress to recognize June 19, 2020, as
"Juneteenth Independence Day."

WHEREAS, on January 1, 1863, President Abraham Lincoln
issued the Emancipation Proclamation, which ended slavery, and

WHEREAS, despite the issuance of the Emancipation
Proclamation, news of the end of slavery did not travel to
certain regions of the United States for more than 2 years
afterwards, and

WHEREAS, on or about June 19, 1865, federal authorities had
arrived in Galveston, Texas, to inform slaves that the Civil War
had ended and that the enslaved were now free, and

WHEREAS, following emancipation, former slaves and their
descendants continued to commemorate each June 19 in recognizing
the emancipation of all slaves in the United States and
celebrating freedom, and

WHEREAS, in 1991, Florida officially designated June 19 of
each year as "Juneteenth Day" to commemorate the freeing of
slaves within the state, and

WHEREAS, Congress has previously demonstrated strong
bipartisan support in recognizing "Juneteenth Independence Day,"
evidenced by the introduction of Senate Resolution 253, House
Resolution 448, and House Resolution 450 in June 2019, NOW,
THEREFORE,

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

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38-01064-20

2020978__

That the Congress of the United States is urged to
recognize June 19, 2020, as "Juneteenth Independence Day."

BE IT FURTHER RESOLVED that the Secretary of State dispatch
copies of this memorial to the Majority Leader of the United
States Senate, the Speaker of the House of Representatives, and
each member of the Florida delegation to the United States
Congress.

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The Florida Senate

Committee Agenda Request

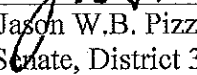
To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **SM 978**, relating to Juneteenth Independence Day, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20

Meeting Date

SB 0978

Bill Number (if applicable)

Topic Juneteenth

Amendment Barcode (if applicable)

Name Sabrina Sanchez-White

Job Title IT Specialist

Address 54226 VUKKI RD

Phone 904 879-7461

Street

Callahan FL 32011

City

State

Zip

Email

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 7006

INTRODUCER: Ethics and Elections Committee

SUBJECT: Penalties for Violations of the Constitutional Prohibition Against Abuse of Public Position

DATE: January 27, 2020 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Mitchell</u>	<u>Roberts</u>		EE Submitted as Comm. Bill/Fav
1. <u>Mitchell</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7006 reenacts s. 112.317, F.S., which provides penalties for violations of the Florida Code of Ethics for Public Officers and Employees and for any violation of Article II, section 8 of the Florida Constitution.

The reenactment of s. 112.317, F.S., will make the section applicable to amendments to the Florida Constitution by Amendment 12 adopted in the 2018 general election. The amended constitutional language prohibits a public officer or public employee from abusing his or her public position in order to obtain a disproportionate benefit. Penalties under s. 112.317, F.S., include impeachment and removal from office, public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution, among other punishments.

Amendment 12 provides that the abuse of public position prohibition takes effect on December 31, 2020. The amendment also requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition to take effect on the same day.

SPB 7006's reenactment of s. 112.317, F.S., effective December 31, 2020, makes the penalty provisions of the section applicable to the constitutional prohibition. This meets the requirement of the Amendment 12 schedule language.

II. Present Situation:

Implementation of Amendment 12, Lobbying and Abuse of Office by Public Officers

Amendment 12, sponsored by President Gaetz in the 2018 Constitution Revision Commission, was adopted during the 2018 election with 78.92% support.¹

¹ Div. of Elections, Fla. Dep't of State, *November 6, 2018 General Election, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=>* (last visited Nov. 11, 2019).

Effective December 31, 2022,² the amendment adds a new, more expansive, 6-year lobby ban on statewide elected officials, county elected officials, members of the Legislature, judges, elected special district officers, and executive agency heads. The Legislature may enact legislation to implement the ban, including defining terms and providing penalties for violations.³ This part of Amendment 12 is not addressed by SPB 7006.

Effective December 31, 2020,⁴ Amendment 12 also prohibits a public officer or public employee from abusing his or her public position in order to obtain a “disproportionate benefit.”

“Disproportionate benefit” may not be obtained by the public officer or public employee for:

- Himself or herself;
- His or her spouse, children, or employer; or
- For any business:
 - With which he or she contracts;
 - In which he or she is an officer, a partner, a director, or a proprietor; or
 - In which he or she owns an interest.⁵

Amendment 12 further provides that by October 1, 2019,⁶ the Florida Commission on Ethics (Commission) is required, by rule in accordance with statutory procedures governing administrative rulemaking, to define “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position.⁷

Following adoption of the Commission’s rules, Amendment 12 requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.⁸ SPB 7006 is proposed as the implementing legislation that establishes penalties for violations of the prohibition.

The Florida Commission on Ethics and the Imposition of Penalties for Ethics Violations

Florida’s Constitution⁹ and state law¹⁰ provide that the Commission is the independent body charged with receiving and investigating sworn complaints involving Florida’s constitutional ethics provisions, as well as any other violation of the Florida Code of Ethics for Public Officers and Employees (Code of Ethics).¹¹ While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation. Instead, whenever the Commission finds that an ethics violation has occurred, the Commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment.¹² The Commission must make such

² FLA. CONST. art. XII, s. 38.

³ FLA. CONST. art. II, s. 8. See Note.

⁴ FLA. CONST. art. XII, s. 38.

⁵ FLA. CONST. art. II, s. 8. See Note.

⁶ FLA. CONST. art. XII, s. 38.

⁷ FLA. CONST. art. II, s. 8. See Note.

⁸ FLA. CONST. art. XII, s. 38.

⁹ FLA. CONST. art. II, s. 8(i)(3).

¹⁰ Section 112.320, F.S.

¹¹ Part III (ss. 112.311 – 112.3261), ch. 112, F.S.

¹² Section 112.324, F.S.

submission to the Senate President or Speaker of the House, whichever is applicable, in any case concerning a former legislator who is alleged to have violated a provision applicable to former legislators or whose alleged conduct occurred while a member of the Legislature. In the case of a former statewide elected officer, the Commission is required to make such submission to the Governor.¹³

Penalties for Violations of the Florida Code of Ethics for Public Officers and Employees

Section 112.317, F.S., provides penalties for violations of the Code of Ethics. In addition to any criminal or other civil penalties that may be applicable, violations of the Code of Ethics, including any violation of Article II, section 8 of The Florida Constitution, may be punished by, one or more of the following:

- In the case of a public officer:
 - Impeachment.
 - Removal from office.
 - Suspension from office.
 - Public censure and reprimand.
 - Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
 - A civil penalty not to exceed \$10,000.
 - Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of which the public officer was a member or to the General Revenue Fund.
- In the case of an employee or a person designated as a public officer by this part who otherwise would be deemed to be an employee:
 - Dismissal from employment.
 - Suspension from employment for not more than 90 days without pay.
 - Demotion.
 - Reduction in his or her salary level.
 - Forfeiture of no more than one-third salary per month for no more than 12 months.
 - A civil penalty not to exceed \$10,000.
 - Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency by which the public employee was employed, or of which the officer was deemed to be an employee, or to the General Revenue Fund.
 - Public censure and reprimand.
- In the case of a former public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred before the officer's or employee's leaving public office or employment:
 - Public censure and reprimand.
 - A civil penalty not to exceed \$10,000.
 - Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.¹⁴

¹³ Id.

¹⁴ Section 112.317(1), F.S.

The Attorney General must bring a civil action to recover a civil or restitution penalty imposed by the proper disciplinary official or body under s. 112.324, F.S., in any case in which the Commission finds a violation of the Code of Ethics or of Article II, section 8 of the Florida Constitution. The Attorney General must collect any costs, attorney fees, expert witness fees, or other costs of collection incurred in bringing the action.¹⁵

A violation of the Code of Ethics or of Article II, section 8 of the Florida Constitution by a public officer constitutes malfeasance, misfeasance, or neglect of duty in office within the meaning of Article IV, section 7 of the Florida Constitution.¹⁶

Section 112.317, F.S., was last amended in 2013. Prohibitions or violations adopted or enacted after the last enactment of the section are not governed by its penalty provisions until a subsequent reenactment of the section.

Rulemaking by the Florida Commission on Ethics

The Commission has adopted Rule 34-18.001 of the Florida Administrative Code, effective September 30, 2019. The rule defines the term “disproportionate benefit” and prescribes the requisite intent for finding a violation of the prohibition against abuse of public position by a public officer or public employee in order to obtain a disproportionate benefit, both required by Amendment 12.

The rule defines “disproportionate benefit” as a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.¹⁷

The rule prescribes that the public officer or public employee acted, or refrained from acting, with the requisite intent for finding a violation of the prohibition against abuse of public position if the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.¹⁸

III. Effect of Proposed Changes:

SB 7006 reenacts s. 112.317, F.S., the statutory section in the Code of Ethics¹⁹ that provides penalties for violations of the Code of Ethics and for any violation of Article II, section 8 of the Florida Constitution.²⁰

¹⁵ Section 112.317(2), F.S.

¹⁶ Section 112.317(4), F.S.

¹⁷ Fla. Admin. Code R. 34-18.001(2)(2019).

¹⁸ Fla. Admin. Code R. 34-18.001(4)(2019).

¹⁹ Part III (ss. 112.311 – 112.3261), ch. 112, F.S.

²⁰ Section 112.317(1), F.S.

The reenactment of s. 112.317, F.S., will make the penalty provisions of the section applicable to Article II, section 8, subsection (h), paragraph (2) of the Florida Constitution, as amended by Amendment 12 adopted in the 2018 general election.²¹ The amended language provides that:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.²²

The amendment also requires appropriate penalties to be prescribed by law.²³ The enactment of this bill will apply the penalty provisions of s. 112.317, F.S., to violations of the prohibition against abuse of public position in Amendment 12.

Schedule language in Amendment 12 provides that the amendments to Article II, Section 8(h) of the Florida Constitution take effect December 31, 2020.²⁴ The language requires the Florida Commission on Ethics by rule to define the term “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position by October 1, 2019.²⁵ Amendment 12 language also provides that following the adoption of these rules by the Commission, the Legislature must enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.²⁶

The effective date of SPB 7006 is December 31, 2020. The bill’s reenactment of s. 112.317, F.S., effective December 31, 2020, makes the penalty provisions of the section applicable to the amended provisions of Article II, section 8, subsection (h) of the Florida Constitution that take effect the same day and follow the adoption of Rule 34-18.001 of the Florida Administrative Code by the Commission, effective September 30, 2019. This meets the requirement of the Amendment 12 schedule language.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

None.

²¹ After these amendatory provisions become effective on December 31, 2020, this reference will be “Article II, section 8, subsection (g), paragraph (2)” until other amendments to s. 8, Art. II take effect December 31, 2022, after which the subsection designation will be (h).

²² FLA. CONST. art. II, s. 8. See Note.

²³ Id.

²⁴ FLA. CONST. art. XII, s. 38.

²⁵ Id.

²⁶ Id.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill reenacts section 112.317 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Ethics and Elections

582-01466-20

20207006__

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A bill to be entitled

An act relating to penalties for violations of the constitutional prohibition against abuse of public position; reenacting s. 112.317, F.S., relating to penalties; providing an effective date.

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

Section 1. For the purpose of implementing the amendment to s. 8, Article II of the State Constitution and the creation of s. 38, Article XII of the State Constitution, as adopted in Amendment 12 in the 2018 general election, and specifying the applicable penalties for violations of the prohibition against abuse of public position, section 112.317, Florida Statutes, is reenacted.

Section 2. This act shall take effect December 31, 2020.

THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY

12th District

January 15, 2020

The Honorable Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, FL 32399


Dear Chair Benacquisto,

I would like to request that SB 7006 Penalties for Violations of the Constitutional Prohibition against Abuse of Public Position be placed on the Rules Committee agenda.

SB 7006 provides penalties for violations of the Florida Code of Ethics for Public Officers and Employees and for any violation of Article II, section 8 of the Florida Constitution. The amended language provides that: A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

Your favorable consideration is appreciated, please do not hesitate to contact me if you have any questions or need additional information.

Thank you,



Senator Dennis Baxley
Florida State Senate – District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SJR 142

INTRODUCER: Senators Brandes and Mayfield

SUBJECT: Abolishing the Constitution Revision Commission

DATE: January 27, 2020

REVISED: _____

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

I. Summary:

SJR 142 abolishes the Constitution Revision Commission by repealing provisions establishing it in the Florida Constitution. Currently, the Florida Constitution requires that a constitution revision commission be convened once every 20 years to examine the Florida Constitution and propose any amendments that it deems appropriate.

If this joint resolution is agreed to by three-fifths of the membership of each house of the legislature, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot or at an earlier special election specifically authorized by law for that purpose. If approved by at least 60 percent of the votes cast on the measure, the proposed amendment will take effect January 5, 2021.

II. Present Situation:

Overview

The Florida Constitution requires that a constitution revision commission be established every 20 years and that it have the authority to propose to voters a revision of all or any part of the Florida Constitution. The most recent Commission convened in 2017-2018, and proposed seven amendments to the Florida Constitution which appeared on the 2018 General Election ballot.

Constitution Revision Commission

Origin and History

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions proposed by the Legislature and approved by the voters. The revisions included the establishment of a constitution revision commission as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in

1977. Accordingly, three commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.¹

Members

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). Additionally, the Governor must appoint a chair from among the 37 members.²

Task, Procedures, and Authority

The Commission's task is to examine the Florida Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.³ In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.⁴

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings."⁵

The Constitution May Be Amended Only through the Processes it Prescribes

The Florida Constitution provides that it may be amended if the voters approve an amendment originating from one of five sources: the legislature, a constitution revision commission, a citizen initiative, a constitutional convention, or a taxation and budget reform commission.⁶

And the Florida Supreme Court has stated that these processes are the *only* ways by which it may be amended:

The Constitution is the charter of our liberties. It cannot be changed, modified or amended by [governmental] fiat. It provides within itself the only method for its amendment, and . . . When a constitution directs how a thing shall be done, that is in effect a prohibition to its being done in any other way.⁷

¹ Constitution Revision Commission, *History*, <https://crc.law.fsu.edu/about/history.html> (last visited Sept. 11, 2019).

² FLA. CONST. art. XI, s. 2.

³ FLA. CONST. art. XI, s. 2.

⁴ FLA. CONST. art. XI, s. 5.

⁵ FLA. CONST. art. XI, s. 2.

⁶ FLA. CONST. art. XI.

⁷ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations and quotations omitted); *accord State v. Florida State Imp. Com'n*, 60 So. 2d 747, 754 (Fla. 1952) (Terrell, J., and Adams, C.J., concurring) *abrogated on other grounds by Boschen v. City of Clearwater*, 777 So. 2d 958 (Fla. 2001).

Joint Resolution

A joint resolution by the legislature is one of the ways in which an amendment to the Florida Constitution may originate.⁸ Like a bill, it may begin in either house of the Legislature.

To be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house.⁹ Unless expedited by the legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the votes cast on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in a revision of the constitution.¹⁰

III. Effect of Proposed Changes:

SJR 142 proposes to amend the Florida Constitution to repeal the provisions that establish a constitution revision commission. The joint resolution also amends other constitutional provisions that reference a constitution revision commission. These changes effectively abolish the constitution revision commission and a commission's authority to propose constitutional amendments to be placed on the ballot for approval by the voters.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁸ FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the legislature, a constitution revision commission, a constitutional convention, a taxation and budget reform commission, or the people directly, by way of an initiative.

⁹ FLA. CONST. art. XI, s. 1.

¹⁰ FLA. CONST. art XI, s. 5.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$63,378.26, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Considering that a taxation and budget reform commission (TBRC) is substantially similar to a constitution revision commission, the Legislature may wish to consider proposing an amendment to the Florida Constitution to abolish the TBRC.

The TBRC, created by Article VI, s. 6 of the Florida Constitution, is comprised of appointees who have the power to propose constitutional amendments directly to the electors. These

¹¹ Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Sept. 12, 2019) (on file with the Senate Committee on Judiciary).

amendments may include a “revision of this constitution or any part of it dealing with taxation or the state budgetary process.”¹²

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹² FLA. CONST. art. XI, s. 6(e).

By Senator Brandes

24-00155-20 2020142__

1 Senate Joint Resolution
 2 A joint resolution proposing amendments to Section 5
 3 of Article II and Section 5 of Article XI and the
 4 repeal of Section 2 of Article XI of the State
 5 Constitution to abolish the Constitution Revision
 6 Commission.
 7
 8 Be It Resolved by the Legislature of the State of Florida:
 9
 10 That the following amendments to Section 5 of Article II
 11 and Section 5 of Article XI and the repeal of Section 2 of
 12 Article XI of the State Constitution are agreed to and shall be
 13 submitted to the electors of this state for approval or
 14 rejection at the next general election or at an earlier special
 15 election specifically authorized by law for that purpose:
 16 ARTICLE II
 17 GENERAL PROVISIONS
 18 SECTION 5. Public officers.-
 19 (a) No person holding any office of emolument under any
 20 foreign government, or civil office of emolument under the
 21 United States or any other state, shall hold any office of honor
 22 or of emolument under the government of this state. No person
 23 shall hold at the same time more than one office under the
 24 government of the state and the counties and municipalities
 25 therein, except that a notary public or military officer may
 26 hold another office, and any officer may be a member of the a
 27 ~~constitution revision commission~~, taxation and budget reform
 28 commission, a constitutional convention, or a statutory body
 29 having only advisory powers.

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

24-00155-20 2020142__

30 (b) Each state and county officer, before entering upon the
 31 duties of the office, shall give bond as required by law, and
 32 shall swear or affirm:
 33
 34 "I do solemnly swear (or affirm) that I will support,
 35 protect, and defend the Constitution and Government of the
 36 United States and of the State of Florida; that I am duly
 37 qualified to hold office under the Constitution of the state;
 38 and that I will well and faithfully perform the duties of
 39 ... (title of office) ... on which I am now about to enter. So
 40 help me God.",
 41
 42 and thereafter shall devote personal attention to the duties of
 43 the office, and continue in office until a successor qualifies.
 44 (c) The powers, duties, compensation and method of payment
 45 of state and county officers shall be fixed by law.
 46 ARTICLE XI
 47 AMENDMENTS
 48 SECTION 5. Amendment or revision election.-
 49 (a) A proposed amendment to or revision of this
 50 constitution, or any part of it, shall be submitted to the
 51 electors at the next general election held more than ninety days
 52 after the joint resolution or report of ~~a revision commission~~,
 53 constitutional convention or the taxation and budget reform
 54 commission proposing it is filed with the custodian of state
 55 records, unless, pursuant to law enacted by the affirmative vote
 56 of three-fourths of the membership of each house of the
 57 legislature and limited to a single amendment or revision, it is
 58 submitted at an earlier special election held more than ninety

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59 days after such filing.

60 (b) A proposed amendment or revision of this constitution,
61 or any part of it, by initiative shall be submitted to the
62 electors at the general election provided the initiative
63 petition is filed with the custodian of state records no later
64 than February 1 of the year in which the general election is
65 held.

66 (c) The legislature shall provide by general law, prior to
67 the holding of an election pursuant to this section, for the
68 provision of a statement to the public regarding the probable
69 financial impact of any amendment proposed by initiative
70 pursuant to section 3.

71 (d) Once in the tenth week, and once in the sixth week
72 immediately preceding the week in which the election is held,
73 the proposed amendment or revision, with notice of the date of
74 election at which it will be submitted to the electors, shall be
75 published in one newspaper of general circulation in each county
76 in which a newspaper is published.

77 (e) Unless otherwise specifically provided for elsewhere in
78 this constitution, if the proposed amendment or revision is
79 approved by vote of at least sixty percent of the electors
80 voting on the measure, it shall be effective as an amendment to
81 or revision of the constitution of the state on the first
82 Tuesday after the first Monday in January following the
83 election, or on such other date as may be specified in the
84 amendment or revision.

85 BE IT FURTHER RESOLVED that the following statement be
86 placed on the ballot:

87 CONSTITUTIONAL AMENDMENT

Page 3 of 4

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88 ARTICLE II, SECTION 5

89 ARTICLE XI, SECTIONS 2 AND 5

90 ABOLISHING THE CONSTITUTION REVISION COMMISSION.—Proposing
91 an amendment to the State Constitution to abolish the
92 Constitution Revision Commission, which meets at 20-year
93 intervals and is scheduled to next convene in 2037, as a method
94 of submitting proposed amendments or revisions to the State
95 Constitution to electors of the state for approval. This
96 amendment does not affect the ability to revise or amend the
97 State Constitution through citizen initiative, constitutional
98 convention, the Taxation and Budget Reform Commission, or
99 legislative joint resolution.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: September 10, 2019

I respectfully request that **Senate Bill #142**, relating to **Abolishing the Constitution Revision Commission**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 142

Bill Number (if applicable)

Meeting Date

Topic CRC

Amendment Barcode (if applicable)

Name Jacquelyn Stevens

Job Title Bus Driver

Address _____

Phone 321-223-6048

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20

Meeting Date

SB 142

Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

FL

32304

City

State

Zip

Email

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

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

Representing Florida AFL-CIO

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/20

Meeting Date

SB 1212

Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Kyle Gennariski

Job Title

Address 1214 Goldfench Dr APT 5

Phone

Street

Plant City

City

FL

State

33563

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing self

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

Lobbyist registered with Legislature: [] Yes [x] 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)

1/29/20

Meeting Date

142

Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Silvia T. Gonzalez

Job Title

Address 3079 N. Cornington dr.

Phone (407) 793-1424

Street Deltona FL 32738

Email

Speaking: [] For [] Against [] Information

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

Representing

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

Lobbyist registered with Legislature: [] Yes [x] 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)

1/29/20

Meeting Date

SB 014Z

Bill Number (if applicable)

Topic ABOLISHING THE CONSTITUTIONAL RESOLUTION COMMITTEE

Amendment Barcode (if applicable)

Name ANTHONY GANTU

Job Title _____

Address 8703 LINDENHURST PL
Street

Phone _____

TAMPA FL 33634
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

1-29-20
Meeting Date

SB0142
Bill Number (if applicable)

Topic Abolishing the constitutional revision committee Amendment Barcode (if applicable)

Name Mark Viggiano

Job Title Plumber

Address 5529 5th Ave N
Street

Phone 727-641-1511

St Petersburg FL 33710
City State Zip

Email _____

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

1/29/20

142

*Meeting Date**Bill Number (if applicable)*

Topic _____

*Amendment Barcode (if applicable)*Name Tim NungesserJob Title Legislative DirectorAddress 110 East Jefferson StreetPhone 850-445-5367*Street*TallahasseeFL32301*City**State**Zip*Email Tim.nungesser@nfib.orgSpeaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing National Federation of Independent BusinessAppearing at request of Chair: Yes NoLobbyist 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)

1/24/2020
Meeting Date

SJR 142
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jim Kallinger

Job Title _____

Address 1408 Pullen Rd.

Phone 850-322-6396

Street Tallahassee FL

City Tallahassee State FL Zip 32303

Email Jim.Kallinger@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

1/29/20

Meeting Date

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

SB 142

Bill Number (if applicable)

Topic Constitution Revision Commission

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College Ave

Phone

Street

City TLH

State

Zip

Email decheverri@afpy.org

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

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

Representing Americans For Prosperity

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

Lobbyist registered with Legislature: [X] 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)

1-29-20

Meeting Date

142

Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name Barbara Delane

Job Title MS

Address 625 E. Brevard ST

Phone 251-4280

Tallahassee State Zip

Email barbadelane1@yahoo.com

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

Waive Speaking: [x] In Support [] Against

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

Representing FL NOW

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

Lobbyist registered with Legislature: [x] 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)

11/29/20
Meeting Date

SB 0142
Bill Number (if applicable)

Topic Constitution Revision Commission

Amendment Barcode (if applicable)

Name Jabriha Sandifer-White

Job Title IT Specialist

Address 54226 VIKKI Rd

Phone 904 879 746

Street

Callahan

City

FL

State

32011

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 1/29/2020 1:32:30 PM

Ends: 1/29/2020 2:31:29 PM

Length: 00:59:00

1:32:29 PM Meeting called to order
1:32:31 PM Roll call
1:32:34 PM Quorum is present
1:33:14 PM Tab 2
1:33:32 PM CS/CS/SB 124 by Senator Bean.
1:34:22 PM Bill is explained
1:35:08 PM Questions on the bill
1:35:12 PM None
1:35:17 PM Victoria Zepp Chief Police Officer FL Coalition for Children in support
1:35:21 PM Sabrina Sandifer White IT Specialist in support
1:35:34 PM Senator Bean closes on bill
1:35:36 PM Roll Call for CS/CS/SB 124
1:35:39 PM CS/CS/SB 124 is reported favorably
1:36:17 PM Tab 6 SB 248 by Senator Hooper
1:36:53 PM Bill is explained
1:36:58 PM Questions on the bill
1:37:13 PM Senator Rodriguez with question
1:37:40 PM Senator Hooper responds
1:38:05 PM Jasmyne Henderson lobbyist Broward County in support
1:38:36 PM No debate. Senator Hooper waives his close
1:38:38 PM Roll call
1:38:43 PM SB 248 is reported favorably
1:39:08 PM Tab 7 CS/SB 476 by Senator Hooper
1:39:35 PM Questions on the bill-
1:40:13 PM None
1:40:15 PM Gary Hester Florida Police Chiefs Association in support/ Melanie Bostick FI Sheriffs Association in support
1:40:23 PM Gary Bradford FL PBA Inc. in support
1:40:30 PM Meredith Stanfield CFO Jimmy Patronis in support
1:40:35 PM Mark Anderson Chief Executive Officers of Management Companies in support
1:40:42 PM No debate.
1:40:49 PM Senator Hooper waives close. Roll call.
1:40:54 PM CS/SB 476 is reported favorably
1:41:22 PM Tab 8 SB 886 by Senator Powell - Errors in Deeds
1:41:49 PM Bill is explained
1:41:51 PM Questions on the bill- none
1:42:05 PM Public Appearance - none
1:42:18 PM No debate
1:42:20 PM Senator Powell waives close
1:42:24 PM Roll call
1:42:33 PM SB 886 is reported favorably
1:42:57 PM Tab 4 SB 294 by Senator Wright - Crimes Against Veterans
1:43:13 PM Bill is explained
1:43:17 PM Questions from members
1:44:05 PM Senator Brandes with question
1:44:12 PM Senator Wright answers
1:45:01 PM Senator Brandes follow up questions
1:45:38 PM Senator Flores with question
1:45:49 PM Senator Wright answers
1:46:05 PM Senator Flores follow up question
1:46:48 PM Senator Wright responds
1:47:39 PM Leader Gibson with question

1:48:31 PM Senator Wright answers
1:48:53 PM Leader Gibson with follow up
1:49:05 PM Chair Benacquisto clarifies intent
1:49:19 PM Senator Wright comments
1:49:50 PM Senator Wright comments
1:49:51 PM Leader Gibson continues follow up discussion
1:50:23 PM Chair Benacquisto comments
1:50:29 PM Senator Rodriguez with question
1:50:37 PM Senator Wright answers
1:51:17 PM Sabrina Sandifer White in support
1:52:04 PM Meredith Stanfield CFO Jimmy Patronis in support
1:52:13 PM Bruce Comer Department Asst/Adjustant with The American Legion speaking in support
1:52:24 PM Melanie Bostick Florida Sheriff Association in support
1:52:31 PM Debate- Senator Simmons
1:54:16 PM Senator Rodriguez in debate
1:55:06 PM Senator Wright waives close
1:55:41 PM Roll call
1:55:43 PM SB 294 is reported favorably
1:56:14 PM Tab 3 SB128 by Senator Wright - Public Records/Judicial Assistants
1:56:28 PM Bill is explained
1:56:30 PM Questions from members-
1:57:16 PM Senator Rodriguez with question
1:57:31 PM Senator Wright responds
1:57:54 PM Alison B Dudley, Judicial Assistants Association for Florida, in support
1:58:01 PM In debate
1:58:07 PM Senator Farmer in debate
1:58:27 PM Senator Rodriguez in debate
1:59:12 PM Senator Wright waives close
1:59:27 PM Roll call
1:59:30 PM CS/SB 128 is reported favorably
2:00:07 PM Tab 5 CS/SB 7010 by Senator Wright
2:00:30 PM Bill is explained
2:01:12 PM Questions on bill
2:02:11 PM Senator Bradley with question
2:02:21 PM Senator Wright responds
2:02:27 PM Senator Bradley with further question
2:02:49 PM Senator Wright responds
2:02:58 PM Senator Bradley with follow up
2:03:13 PM Senator Wright answers
2:03:34 PM Senator Bradley follows up
2:04:17 PM Senator Wright responds
2:04:35 PM Senator Brandes with question
2:05:05 PM Senator Wright responds
2:05:23 PM Senator Brandes with follow up
2:05:37 PM Senator Wright answers
2:06:19 PM Senator Simmons with question
2:06:32 PM Senator Wright responds
2:07:05 PM Senator Bradley with question
2:07:33 PM Senator Wright responds
2:07:49 PM Senator Bradley with follow up
2:07:56 PM Senator Wright responds
2:08:56 PM Senator Bradley with follow up
2:09:07 PM Senator Wright responds
2:09:55 PM Senator Bradley continues
2:10:03 PM Senator Wright answers
2:10:41 PM Staff member: Attorney analyst from committee provides clarification on the bill
2:11:48 PM Chair Benacquisto: seeing no further questions go to Public Appearance
2:11:56 PM Sabrina Sandifer White IT Specialis Callahan FL in support
2:12:04 PM Senator Brandes in debate
2:13:48 PM Chair Benacquisto
2:13:50 PM Senator Simmons in debate
2:16:45 PM Senator Lee in debate

2:18:21 PM Chair Benacquisto suggests to Senator Wright to TP Bill 7010 to work on concerns
2:19:21 PM Senator Simpson moves to TP Bill CS/SB 7010
2:19:33 PM Motion is adopted without objection
2:19:42 PM Tab 10 SB 7006 by Senator Baxley - Penalties Violations to Constitutional Prohibition...
2:20:08 PM Bill explained. No questions. No public testimony. No debate.
2:20:25 PM Senator Baxley waives close
2:20:32 PM Roll call
2:20:33 PM SB 7006 by EE is reported favorably
2:21:00 PM Tab 1 SB 88 by Senator Stewart - Child Care Facilities
2:21:12 PM Bill is explained
2:21:19 PM Questions on the bill
2:21:55 PM None
2:22:04 PM Public Appearance: Sabrina Sandifer White Callahan FL in support
2:22:06 PM Michael Crabb Lieutenant Orlando Orange County Sheriff in support
2:22:24 PM In debate- none
2:22:49 PM Senator Stewart waives close
2:22:53 PM Roll call
2:22:57 PM SB 88 is reported favorably
2:23:31 PM Tab 9 SM 978 by Senator Pizzo
2:23:47 PM Bill is explained
2:23:49 PM Questions from members - none
2:23:53 PM Public Appearance: Sabrina Sandifer White Callahan FL in support
2:24:26 PM Senator Pizzo closes on Memorial
2:24:42 PM Roll call
2:24:44 PM SM 978 is reported favorably
2:25:10 PM Tab 11 - SJR 142 by Senator Brandes - Abolishing the Constitution Revision Commission
2:25:30 PM Bill is explained
2:25:33 PM No questions
2:25:36 PM Public Appearance: Sabrina Sandifer White of Callahan FL in support
2:25:44 PM Barbara Devane, FL Now, in support
2:25:49 PM Diego Echeverri, Americans for Prosperity, in support
2:25:55 PM Jim Kallinger of Tallahassee speaks in support
2:28:09 PM Senator Thurston with question for Mr. Kallinger
2:29:09 PM Mr. Kallinger responds
2:29:26 PM Jacquelyn Stevens, Bus Driver, in support
2:29:37 PM Dr. Rich Templin, FL AFL-CIO, speaking in support
2:29:46 PM Kyle Gavoriski, Plant City, FL, in support
2:29:51 PM Sylvia T. Gonzalez Deltona FL in support
2:30:01 PM Mark Viggiano, Plumber St. Petersburg, in support
2:30:13 PM Anthony Cantu, Tampa FL, in support
2:30:17 PM Tim Nungesser, Tallahassee National Federation of Independent Business, in support
2:30:18 PM Senator Brandes waives close
2:30:23 PM Roll call
2:30:29 PM SJR 142 is reported favorably
2:30:49 PM Senator Simpson makes a motion to vote after for CS/SB476 in the affirmative. That motion adopted.
2:30:59 PM Senator Flores makes a motion to vote after Favorably for CS/CS/SB124. That motion adopted
2:31:12 PM Senator Simmons moves we adjourn.
2:31:18 PM The meeting is adjourned.