

**CS/CS/SB 248** by **GO, CJ, Smith (CO-INTRODUCERS) Thompson;** (Compare to H 0581) Public Records/Body  
Camera Recording Made by a Law Enforcement Officer  
108082 D S L RCS RC, Gibson Delete everything after 04/02 03:16 PM

**CS/SB 466** by **RI, Flores;** (Similar to CS/H 0413) Low-voltage Alarm Systems

**SB 562** by **Simpson;** (Identical to H 0579) Growth Management

**CS/CS/SB 1094** by **CA, BI, Brandes;** (Similar to CS/H 0895) Peril of Flood  
955694 A S RCS RC, Lee btw L.71 - 72: 04/02 03:18 PM

**CS/SB 378** by **CJ, Garcia, Gibson (CO-INTRODUCERS) Bullard, Smith, Detert;** (Identical to CS/CS/H 0099)  
Juvenile Justice

**CS/CS/SB 554** by **JU, CM, Simmons;** (Similar to CS/CS/CS/H 0531) Limited Liability Companies  
664452 A S L RCS RC, Simmons Delete L.92 - 114: 04/02 03:19 PM

**CS/SB 1146** by **HP, Simmons;** (Similar to H 0965) Agency Relationships with Governmental Health Care Contractors

**CS/SB 856** by **BI, Latvala;** (Similar to CS/H 0769) Health Provider Contracts  
490478 D S RCS RC, Latvala Delete everything after 04/02 03:23 PM

**CS/SB 1446** by **GO, Richter;** (Similar to CS/H 0997) Public Records/Department of Agriculture and Consumer Services  
777322 A S RCS RC, Richter Delete L.27: 04/02 03:23 PM

**CS/SB 7040** by **GO, TR;** (Similar to CS/H 7041) Public Records/E-mail Addresses/Department of Highway Safety and  
Motor Vehicles  
632218 A S RCS RC, Lee Delete L.47 - 48: 04/02 03:24 PM

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

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

**MEETING DATE:** Thursday, April 2, 2015  
**TIME:** 11:30 a.m.—1:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 248</b> Governmental Oversight and Accountability / Criminal Justice / Smith (Compare H 581, S 852)	Public Records/Body Camera Recording Made by a Law Enforcement Officer; Providing that a body camera recording is confidential and exempt from public records requirements under certain circumstances; providing exceptions; requiring a law enforcement agency to retain body camera recordings for at least a specified period; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ     02/16/2015 Fav/CS GO     03/10/2015 Not Considered GO     03/17/2015 Fav/CS RC     04/02/2015 Fav/CS	Fav/CS Yeas 12 Nays 0
2	<b>CS/SB 466</b> Regulated Industries / Flores (Similar CS/H 413)	Low-voltage Alarm Systems; Revising the definition of the term "low-voltage alarm system project" and adding the definition of the term "wireless alarm system"; providing that a permit is not required to install, maintain, inspect, replace, or service a wireless alarm system and its ancillary components; prohibiting a local enforcement agency from requiring the payment of any additional fees, charges, or expenses associated with the installation or replacement of a new or existing alarm system, etc.  RI     03/04/2015 Fav/CS CA     03/17/2015 Favorable RC     04/02/2015 Favorable	Favorable Yeas 12 Nays 0
3	<b>SB 562</b> Simpson (Identical H 579, Compare CS/H 933)	Growth Management; Requiring plan amendments proposing a development that qualifies as a development of regional impact to be subject to the state coordinated review process; providing that new proposed developments are subject to the state coordinated review process and not the development of regional impact review process, etc.  CA     03/10/2015 Favorable TR     03/19/2015 Favorable RC     04/02/2015 Favorable	Favorable Yeas 9 Nays 3

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, April 2, 2015, 11:30 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/CS/SB 1094</b> Community Affairs / Banking and Insurance / Brandes (Similar CS/H 895)	Peril of Flood; Specifying requirements for the coastal management element required for a local government comprehensive plan; requiring a surveyor and mapper to complete an elevation certificate in accordance with a checklist developed by the Division of Emergency Management and to submit a copy of the elevation certificate to the division within a certain time after its completion; deleting a provision that prohibits supplemental flood insurance from including excess coverage over any other insurance covering the peril of flood, etc.  BI 03/10/2015 Fav/CS CA 03/23/2015 Fav/CS RC 04/02/2015 Fav/CS	Fav/CS Yeas 11 Nays 0
5	<b>CS/SB 378</b> Criminal Justice / Garcia / Gibson (Identical CS/CS/H 99)	Juvenile Justice; Authorizing a law enforcement officer to issue a warning to a juvenile who admits having committed a misdemeanor or to inform the child's parent or guardian of the child's infraction; allowing a law enforcement officer who does not exercise one of these options to issue a civil citation or require participation in a similar diversion program; requiring a law enforcement officer to provide written documentation in certain circumstances, etc.  CJ 03/02/2015 Temporarily Postponed CJ 03/10/2015 Fav/CS CF 03/26/2015 Favorable RC 04/02/2015 Favorable	Favorable Yeas 9 Nays 2
6	<b>CS/CS/SB 554</b> Judiciary / Commerce and Tourism / Simmons (Similar CS/CS/CS/H 531)	Limited Liability Companies; Specifying that persons who are not members of a limited liability company are not deemed to have notice of a provision of the company's articles of organization which limits a person's authority to transfer real property held in the company's name unless such limitation appears in an affidavit, certificate, or other instrument that is recorded in a specified manner; removing the prohibition that an operating agreement may not vary the power of a person to dissociate, etc.  CM 03/02/2015 Fav/CS JU 03/17/2015 JU 03/24/2015 Fav/CS RC 04/02/2015 Fav/CS	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, April 2, 2015, 11:30 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>CS/SB 1146</b> Health Policy / Simmons (Similar H 965)	Agency Relationships with Governmental Health Care Contractors; Extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; authorizing such health care provider to collect from a patient, or the parent or guardian of a patient, a nominal fee for administrative costs under certain circumstances, etc.  HP 03/10/2015 Fav/CS JU 03/24/2015 Favorable RC 04/02/2015 Favorable	Favorable Yeas 11 Nays 0
8	<b>CS/SB 856</b> Banking and Insurance / Latvala (Similar CS/H 769)	Health Provider Contracts; Providing that a contract between a health insurer, a prepaid limited health service organization, or a health maintenance organization, respectively, or a third-party administrator thereof, and a licensed ophthalmologist or optometrist may not require the licensee to provide vision care services as a condition of providing any other service or to purchase certain materials or services from specified entities; providing that a contract between a health insurer, a prepaid limited health service organization, or a health maintenance organization, respectively, or a third-party administrator thereof, and a licensed optician may not require the licensee to purchase certain materials from specified entities, etc.  BI 03/17/2015 Fav/CS JU 03/24/2015 Favorable RC 04/02/2015 Fav/CS	Fav/CS Yeas 11 Nays 0
9	<b>CS/SB 1446</b> Governmental Oversight and Accountability / Richter (Similar CS/H 997, Compare CS/H 995, Link CS/S 1444)	Public Records/Department of Agriculture and Consumer Services; Providing an exemption from public records requirements for criminal or civil intelligence or investigative information, or any other information, held by the Department of Agriculture and Consumer Services as part of an investigation with another state or federal regulatory, administrative, or criminal justice agency; providing exceptions to the public records exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  CM 03/16/2015 Favorable GO 03/23/2015 Fav/CS RC 04/02/2015 Fav/CS	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, April 2, 2015, 11:30 a.m.—1:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>CS/SB 7040</b> Governmental Oversight and Accountability / Transportation (Similar CS/H 7041)	Public Records/E-mail Addresses/Department of Highway Safety and Motor Vehicles; Providing an exemption from public records requirements for e- mail addresses collected by the Department of Highway Safety and Motor Vehicles; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.  GO 03/23/2015 Fav/CS RC 04/02/2015 Fav/CS	Fav/CS Yeas 10 Nays 1

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Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/CS/SB 248

**INTRODUCER:** Rules Committee; Governmental Oversight and Accountability Committee; Criminal Justice Committee; and Senator Smith and others

**SUBJECT:** Public Records/Recordings by Law Enforcement Officers

**DATE:** April 2, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 248 creates a public records exemption for a body camera recording made by a law enforcement officer. By definition, the body camera records audio and video data in the course of the officer performing his or her official duties and responsibilities.

The bill makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

A law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.

A law enforcement agency must disclose a body camera recording, or a portion thereof, to:

- A person recorded by a body camera (the person receives those portions of the recording relevant to the person's presence in the recording);

- The personal representative of a person recorded by a body camera (the person receives those portions of the recording relevant to the recorded person’s presence in the recording);
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the person receives those portions of the recording that record the interior of such a place); and
- Pursuant to a court order.

The bill specifies grounds the court must consider in determining whether to order disclosure of the body camera recording. In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate.

A law enforcement agency must retain a body camera recording for at least 90 days.

The exemption applies retroactively. It does not supersede any other exemption existing prior to or created after the effective date of this exemption. Those portions of a body camera recording that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

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

## II. Present Situation:

### Body-Worn Cameras and Public Records

Body-Worn Cameras (BWCs) or “body cameras” are currently being used or considered for use by many law enforcement agencies. “BWCs are mobile audio and video capture devices that allow officers to record what they see and hear. Devices can be attached to various body areas, including the head, by helmet, glasses or other means, or to the body by pocket, badge, or other means of attachment (such as in-car on the dash). They have the capability to record officer interactions that previously could only be captured by in-car interrogation room camera systems.”<sup>1</sup>

Florida Police Chiefs Association staff is aware of 13 Florida police departments that currently use BWCs<sup>2</sup> and 9 Florida police departments that have implemented pilot programs to test the

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<sup>1</sup> Sensor, Surveillance, and Biometric Technologies Center of Excellence. September 2012. *A Primer on Body-Worn Cameras for Law Enforcement*. National Institute of Justice. The quoted text is from page 5 of the report, which is available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> (last viewed on March 31, 2015).

<sup>2</sup> Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

use of BWCs.<sup>3</sup> The media have reported that the Flagler County Sheriff's Office is using BWCs<sup>4</sup> and the Pasco County Sheriff has indicated an intent to purchase BWCs.<sup>5</sup> Other Florida sheriffs' offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing "a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where DOJ facilitates community and local LEA engagement. As part of this initiative, a new Body Worn Camera Partnership Program would provide a 50 percent match to States/localities who purchase body worn cameras and requisite storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras."<sup>6</sup>

In a recently released report on BWCs it was noted:

State public disclosure laws, often known as freedom of information laws, govern when footage from body-worn cameras is subject to public release. However, most of these laws were written long before law enforcement agencies began deploying body-worn cameras, so the laws do not necessarily account for all of the considerations that must be made when police departments undertake a body-worn camera program.

Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people's homes—will raise privacy concerns if they are released to the public or the news media. When determining how to approach public disclosure issues, law enforcement agencies must balance the legitimate interest of openness with protecting privacy rights.

In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release. For example, even the broadest disclosure laws typically contain an exception for video that contains evidence or is part of an ongoing investigation. Some state disclosure laws, such as those in North Carolina, also exempt personnel records from public release. Body-worn camera videos used to monitor officer performance may fall under this type of exception.<sup>7</sup>

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<sup>3</sup> Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach.

<sup>4</sup> Metz, Claire. "Flagler County deputies fitted with new body cameras." WESH.com (Orlando). August 28, 2014. The news broadcast video is available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830> (last viewed on March 31, 2015).

<sup>5</sup> Behrman, Elizabeth. "Local law enforcement split on body cameras." *The Tampa Tribune*. December 14, 2014. The article is available at <http://tbo.com/news/crime/-20141226/> (last viewed on March 31, 2015).

<sup>6</sup> "FACT SHEET: Strengthening Community Policing," Office of the Press Secretary, The White House. December 1, 2014. The document is available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> (last viewed on March 31, 2015).

<sup>7</sup> Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services. The quoted text is from page 17 (footnote omitted) of the report, which is available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (last viewed on March 31, 2015).

Depending upon the content recorded by a BWC, the recording or particular information in the recording may be subject to a public records exemption in current Florida law. If not subject to an exemption, the recording would be a public record. Some of the current public records exemptions that may be relevant to a BWC recording include:

- Active criminal intelligence information and active criminal investigative information (exempt);<sup>8</sup>
- Information revealing surveillance techniques or procedures or personnel (exempt);<sup>9</sup>
- Information revealing the substance of a confession of a person arrested (exempt);<sup>10</sup>
- Information revealing the identity of a confidential informant or a confidential source (exempt);<sup>11</sup>
- Criminal intelligence information or criminal investigative information that reveals the identity of the victim of the crime of child abuse or any sexual offense or a videotape or image of any part of the body of the victim of a statutorily-specified sexual offense (confidential and exempt);<sup>12</sup>
- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of a statutorily-specified sexual offense, which reveals that minor's identity, home, school, etc. (confidential and exempt);<sup>13</sup> or
- Information revealing undercover personnel of any criminal justice agency (exempt).<sup>14</sup>

### **Public Records Laws**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>15</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>16</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>17</sup> guarantees every person's right to inspect and

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<sup>8</sup> Section 119.071(2)(c)1., F.S.

<sup>9</sup> Section 119.071(2)(d), F.S.

<sup>10</sup> Section 119.071(2)(e), F.S.

<sup>11</sup> Section 119.071(2)(f), F.S.

<sup>12</sup> Section 119.071(2)(h), F.S.

<sup>13</sup> Section 119.071(2)(j)2.a, F.S.

<sup>14</sup> Section 119.071(4)(c), F.S.

<sup>15</sup> FLA. CONST., art. I, s. 24(a).

<sup>16</sup> *Id.*

<sup>17</sup> Chapter 119, F.S.

copy any state or local government public record<sup>18</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>19</sup>

Only the Legislature may create an exemption to public records requirements.<sup>20</sup> This exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>21</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.<sup>22</sup> If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption.<sup>23</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>24</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>25</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>26</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>27</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.<sup>28</sup> An

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<sup>18</sup> Section 119.011(12), F.S., defines “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

<sup>19</sup> Section 119.07(1)(a), F.S.

<sup>20</sup> FLA. CONST., art. I, s. 24(c).

<sup>21</sup> FLA. CONST., art. I, s. 24(c).

<sup>22</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). Attorney General Opinion 85-62, (August 1, 1985).

<sup>23</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004). *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).

<sup>24</sup> However, the bill may contain multiple exemptions that relate to one subject.

<sup>25</sup> FLA. CONST., art. I, s. 24(c).

<sup>26</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>27</sup> Section 119.15(3), F.S.

<sup>28</sup> Section 119.15(6)(b), F.S.

exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption.<sup>29</sup>
- The release of 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.<sup>30</sup>
- It protects trade or business secrets.<sup>31</sup>

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

The OGSR also requires specified questions to be considered during the review process.<sup>32</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>33</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>34</sup>

### III. Effect of Proposed Changes:

The bill creates s. 119.071(2)(1), F.S., which creates a public records exemption for a body camera recording made by a law enforcement officer.<sup>35</sup> As defined in the bill a "body camera" is a portable electronic recording device that is worn on a law enforcement officer's body and that

<sup>29</sup> Section 119.15(6)(b)1., F.S.

<sup>30</sup> Section 119.15(6)(b)2., F.S.

<sup>31</sup> Section 119.15(6)(b)3., F.S.

<sup>32</sup> 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?

<sup>33</sup> FLA. CONST., art. I, s. 24(c).

<sup>34</sup> Section 119.15(7), F.S.

<sup>35</sup> The bill states that "law enforcement officer" has the same meaning as provided in s. 943.10, F.S. Section 943.10(1), F.S., defines a "law enforcement officer" as any 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. This 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.

records audio and video data in the course of the officer performing his or her official duties and responsibilities.

The bill makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

A law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.

A law enforcement agency must disclose a body camera recording, or a portion thereof, to:

- A person recorded by a body camera (the person receives those portions of the recording relevant to the person's presence in the recording);
- The personal representative<sup>36</sup> of a person recorded by a body camera (the person receives those portions of the recording relevant to the recorded person's presence in the recording);<sup>37</sup>
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the person receives those portions of the recording that record the interior of such a place); and
- Pursuant to a court order.<sup>38</sup>

The bill provides that, in addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court must consider whether:

- Disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Disclosure may cause reputational harm or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

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<sup>36</sup> The bill defines "personal representative" as a parent of, a court-appointed guardian of, an attorney of, an agent of, or a person holding a power of attorney for a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

<sup>37</sup> This scenario would include a situation in which the person recorded was unable to give consent for some reason or was deceased.

<sup>38</sup> Currently, records which are held exempt or confidential and exempt are subject to disclosure by a court order.

- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.

In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate.

A law enforcement agency must retain a body camera recording for at least 90 days. Generally, records retained by law enforcement agencies are governed by statutes and rules promulgated by the Department of State, Division of Library Services.<sup>39</sup> Currently, public records may be destroyed in accordance with the retention schedules established by the Division of Library Services.<sup>40</sup> This language will require law enforcement to retain these recordings for a minimum amount of time but does not otherwise supersede the retention and destruction schedule established by the Division of Library Services.

The exemption applies retroactively. It does not supersede any other exemption existing prior to or created after the effective date of this exemption. Those portions of a body camera recording that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.

The bill also provides a statement of public necessity for the exemption, as required by the Florida Constitution. The public necessity statement includes the following findings:

- There is an increased prevalence of body cameras being used by law enforcement officers.
- Body cameras preserve information in an objective manner that enhances the ability of both law enforcement officers and the public to review the circumstances surrounding an event in which law enforcement intervention occurs.
- Availability of readily observable and candid recordings increases transparency and public confidence in law enforcement officers.
- In certain instances, information recorded by body cameras is significantly more likely to capture highly sensitive personal information than other types of law enforcement recordings or documents.
- Public disclosure of these recordings could have an undesirable chilling effect:
  - People who know that they are being recorded by a body camera may be unwilling to fully cooperate with law enforcement officers if they know that a body camera recording can be made available to anyone in the public.
  - People may also be less likely to call a law enforcement agency for services if their sensitive personal information or the circumstances that necessitate a law enforcement agency's involvement are subject to public dissemination as a body camera recording.
- Body camera recordings could be used for criminal purposes if they were available upon request.

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<sup>39</sup> Section 257.36, F.S. *See* State of Florida General Records Schedule GS2 For Law Enforcement, Correctional Facilities, and District Medical Examiners, effective February 19, 2015, available at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited on March 31, 2015).

<sup>40</sup> Section 257.36(6), F.S.

- This exemption from public records requirements allows law enforcement officers to more effectively and efficiently administer their duties, which would otherwise be significantly impaired.
- These concerns regarding the impact of the public records requirements for body camera recordings not only necessitate the exemption of the recordings from public records requirements but also outweigh any public benefit that may be derived from their disclosure.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The effective date of the bill is July 1, 2015.

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

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

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

None.

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

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

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

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

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts body camera recordings in limited circumstances: the interior of a residence; the interior of a health care, mental health care, or social services facility; the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; and a place that a reasonable person would expect to be private. However, because descriptions of some of these places would require some interpretation by custodians of the recordings, questions may be raised as to whether the exemption is limited to what is necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill, in part, exempts from public disclosure a body camera recording that is taken in a place that a reasonable person would expect to be private.

Article I, Section 23 of the Florida Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provide by law.

The Florida Supreme Court has stated that the right of privacy includes a right to “be free from uninvited observation or of interference in those aspect of [Floridians’] lives that fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest.”<sup>41</sup> Referring to a case which predated Article I, Section 23 of the Florida Constitution, the Florida Supreme Court opined that the people have a fundamental right to control what they reveal about themselves and to whom they chose to reveal themselves, and noted “this power is exercised in varying degrees by differing individuals, the parameters of an individuals’ privacy can be dictated only by that individual.”<sup>42</sup>

The Florida Supreme Court found that before the right of privacy attaches “a reasonable expectation of privacy must exist.”<sup>43</sup> The test for making that determination is “whether the law recognizes an individual’s legitimate expectation of privacy” in a certain type of record.<sup>44</sup> The Florida Supreme Court also recognizes the right to be free of observation and interference in aspects of life that fall within a “zone of privacy.”<sup>45</sup> In determining whether an individual has a legitimate expectation of privacy in a given case, the court must consider all of the circumstances, especially objective manifestations of that expectation.<sup>46</sup>

Courts have used public records exemptions as guideposts of when a privacy interest exists. For example, the Florida Fourth District Court of Appeal relied on the Florida

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<sup>41</sup> *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

<sup>42</sup> *Id.* at 151.

<sup>43</sup> *Winfield v. Division of Pari-Mutual Wagering, Department of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985).

<sup>44</sup> *Id.*

<sup>45</sup> *Shaktman*, 553 So.2d at 150.

<sup>46</sup> *Shaktman*, 533 So.2d at 153. In his concurring opinion, the Chief Justice Ehrlich opined that “the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances, such as the kind of information, where it is kept, who has access to it and under what circumstances.” *Id.*

Supreme Court’s finding that financial records were private, but also observed that there was a statutory public records exemption for financial information held by a state agency, and noted that “the legislature has recognized the confidential nature of the exact type of information at issue.”<sup>47</sup> Likewise, the Second District Court of Appeal of Florida found that people have an expectation of privacy in their social security numbers, and as authority, noted that social security numbers were protected from disclosure by both federal and state law and by various rules of procedure.<sup>48</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The definition of a “personal representative” provides that a parent of a person recorded is permitted to get those portions of a body camera recording that are relevant to the represented recorded person’s presence in the recording. This would permit the parent of an adult with full legal capacity to have his or her parent receive a copy of a body camera recording in contravention of his or her wishes. The phrase “parent of a minor child who is not an emancipated minor” may be more appropriate, depending on the intent of the Legislature.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 119.071 of the Florida Statutes.

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<sup>47</sup> *Berkley v. Eisen*, 699 So.2d 789, 791 (Fla. 4th DCA 1997).

<sup>48</sup> *Thomas v. Smith*, 882 So.2d 1037, 1045 (Fla. 2d DCA 2004).

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Rules Committee on April 2, 2015:**

- Revises definitions of “body camera” and “personal representative” and defines “law enforcement officer” by reference to the meaning of that term in s. 943.10, F.S.
- Specifies that a portion of the body camera recording is also confidential and exempt.
- Revises language relating to places in which a recording, if made in those places, would be confidential and exempt.
- Specifies that a person depicted in a body camera recording or that person’s personal representative can only receive those portions of the recording that are relevant to the recorded person’s presence in the recording.
- Requires a law enforcement agency to disclose portions of a body camera recording to a person not depicted in the recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the person receives those portions of the recording that record the interior of such a place).
- Specifies grounds the court must consider in determining whether to order disclosure of the body camera recording.
- Provides that, in any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate.
- Provides that the new exemption does not supersede any other exemption existing prior to or created after the effective date of this exemption.
- Provides that those portions of a body camera recording that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.
- Modifies the public necessity statement.

**CS/CS by Governmental Oversight and Accountability on March 17, 2015:**

- Defines body camera and personal representative.
- Makes body camera recordings confidential and exempt if they are taken in certain places.
- Requires law enforcement must release body camera recordings in certain circumstances.
- Provides that a body camera recording must be retained for 90 days.
- Provides for retroactive application to all body camera recordings.
- Makes the public necessity statement more specific.
- Creates a new paragraph to eliminate the need to renumber s. 119.071(2), F.S. and change cross references.

**CS by Criminal Justice on February 16, 2015:**

- Creates a public records exemption for an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties or responsibilities, if the recording is taken within certain locations, shows a minor

inside a school or on school property, or shows a child younger than 14 years of age at any location.

- Specifies how the exemption operates in relation to other exemptions that may apply.
- Provides for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.
- Authorizes the law enforcement agency with custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities.
- Specifies persons who may inspect the recording.
- Requires a law enforcement agency to have a retention policy of not longer than 90 days for the audio or video recordings unless the recording is part of an active criminal investigation or criminal intelligence operation or a court orders its retention for a longer period.
- Requires a law enforcement agency to disclose its records retention policy for recordings under the new exemption.
- Provides a statement of public necessity for the exemption.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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	.	
	.	

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The Committee on Rules (Gibson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (1) is added to subsection (2) of  
section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(1)1. As used in this paragraph, the term:

a. "Body camera" means a portable electronic recording



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12 device that is worn on a law enforcement officer's body and that  
13 records audio and video data in the course of the officer  
14 performing his or her official duties and responsibilities.

15 b. "Law enforcement officer" has the same meaning as  
16 provided in s. 943.10.

17 c. "Personal representative" means a parent , a court-  
18 appointed guardian, an attorney, or an agent of, or a person  
19 holding a power of attorney for, a person recorded by a body  
20 camera. If a person depicted in the recording is deceased, the  
21 term also means the personal representative of the estate of the  
22 deceased person; the deceased person's surviving spouse, parent,  
23 or adult child; the deceased person's attorney or agent; or the  
24 parent or guardian of a surviving minor child of the deceased.  
25 An agent must possess written authorization of the recorded  
26 person to act on his or her behalf.

27 2. A body camera recording, or a portion thereof, is  
28 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
29 of the State Constitution if the recording:

30 a. Is taken within the interior of a private residence;

31 b. Is taken within the interior of a facility that offers  
32 health care, mental health care, or social services;

33 c. Is taken at the scene of a medical emergency involving a  
34 death or involving an injury that requires transport to a  
35 medical facility; or

36 d. Is taken in a place that a reasonable person would  
37 expect to be private.

38 3. Notwithstanding subparagraph 2., a body camera recording  
39 may be disclosed by a law enforcement agency:

40 a. In furtherance of its official duties and



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41 responsibilities; or

42 b. To another governmental agency in the furtherance of its  
43 official duties and responsibilities.

44 4. A body camera recording, or a portion thereof, shall be  
45 disclosed by a law enforcement agency:

46 a. To a person recorded by a body camera; however, a law  
47 enforcement agency may disclose only those portions that are  
48 relevant to the person's presence in the recording;

49 b. To the personal representative of a person recorded by a  
50 body camera; however, a law enforcement agency may disclose only  
51 those portions that are relevant to the represented person's  
52 presence in the recording;

53 c. To a person not depicted in a body camera recording if  
54 the recording depicts a place in which the person lawfully  
55 resided, dwelled, or lodged at the time of the recording;  
56 however, a law enforcement agency may disclose only those  
57 portions that record the interior of such a place.

58 d. Pursuant to a court order.

59 (I) In addition to any other grounds the court may consider  
60 in determining whether to order that a body camera recording be  
61 disclosed, the court shall consider whether:

62 (A) Disclosure is necessary to advance a compelling  
63 interest;

64 (B) The recording contains information that is otherwise  
65 exempt or confidential and exempt under the law;

66 (C) The person requesting disclosure is seeking to obtain  
67 evidence to determine legal issues in a case in which the person  
68 is a party;

69 (D) Disclosure would reveal information regarding a person



70 that is of a highly sensitive personal nature;

71 (E) Disclosure may harm the reputation or jeopardize the  
72 safety of a person depicted in the recording;

73 (F) Confidentiality is necessary to prevent a serious and  
74 imminent threat to the fair, impartial, and orderly  
75 administration of justice;

76 (G) The recording could be redacted to protect privacy  
77 interests; and

78 (H) There is good cause to disclose all or portions of a  
79 recording.

80 (II) In any proceeding regarding the disclosure of a body  
81 camera recording, the law enforcement agency that made the  
82 recording shall be given reasonable notice of hearings and shall  
83 be given an opportunity to participate.

84 5. A law enforcement agency must retain a body camera  
85 recording for at least 90 days.

86 6. The exemption provided in subparagraph 2. applies  
87 retroactively.

88 7. This exemption does not supersede any other public  
89 records exemption that existed before or is created after the  
90 effective date of this exemption. Those portions of a recording  
91 which are protected from disclosure by another public records  
92 exemption shall continue to be exempt or confidential and  
93 exempt.

94 8. This paragraph is subject to the Open Government Sunset  
95 Review Act in accordance with s. 119.15 and shall stand repealed  
96 on October 2, 2020, unless reviewed and saved from repeal  
97 through reenactment by the Legislature.

98 Section 2. (1) The Legislature finds that it is a public



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99 necessity that the following types of body camera recordings are  
100 made confidential and exempt from s. 119.07(1), Florida  
101 Statutes, and s. 24(a), Article I of the State Constitution:  
102 recordings taken within the interior of a private residence;  
103 recordings taken within the interior of a facility that offers  
104 health care, mental health care, or social services; recordings  
105 taken at the scene of a medical emergency involving a death or  
106 involving an injury that requires transport to a medical  
107 facility; and recordings taken in a place that a reasonable  
108 person would expect to be private.

109 (2) The Legislature recognizes the increased prevalence of  
110 body cameras being used by law enforcement officers. Body  
111 cameras preserve information in an objective manner that  
112 enhances the ability of both law enforcement officers and the  
113 public to review the circumstances surrounding an event in which  
114 law enforcement intervention occurs. The availability of readily  
115 observable and candid recordings increases transparency and  
116 public confidence in law enforcement officers.

117 (3) However, the Legislature also finds that, in certain  
118 instances, audio and video recorded by body cameras is  
119 significantly more likely to capture highly sensitive personal  
120 information than other types of law enforcement recordings or  
121 documents. The Legislature finds that public disclosure of these  
122 recordings could have an undesirable chilling effect. People who  
123 know they are being recorded by a body camera may be unwilling  
124 to cooperate fully with law enforcement officers if they know  
125 that a body camera recording can be made publicly available to  
126 anyone else. People may also be less likely to call a law  
127 enforcement agency for services if their sensitive personal



128 information or the circumstances that necessitate a law  
129 enforcement agency's involvement are subject to public  
130 dissemination as a body camera recording. The Legislature also  
131 finds that body camera recordings could be used for criminal  
132 purposes if they were available upon request. This exemption  
133 from public records requirements allows law enforcement officers  
134 to more effectively and efficiently administer their duties,  
135 which would otherwise be significantly impaired. The Legislature  
136 finds that these concerns regarding the impact of the public  
137 records requirements for body camera recordings not only  
138 necessitate the exemption of the recordings from public records  
139 requirements, but also outweigh any public benefit that may be  
140 derived from their disclosure.

141 Section 3. This act shall take effect July 1, 2015.

142  
143 ===== T I T L E A M E N D M E N T =====

144 And the title is amended as follows:

145 Delete everything before the enacting clause  
146 and insert:

147 A bill to be entitled  
148 An act relating to public records; amending s.  
149 119.071, F.S.; defining the terms "body camera," "law  
150 enforcement officer," and "personal representative";  
151 providing that a body camera recording is confidential  
152 and exempt from public records requirements under  
153 certain circumstances; providing exceptions; requiring  
154 a law enforcement agency to retain body camera  
155 recordings for at least a specified period; providing  
156 for retroactive application; providing for future



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157 legislative review and repeal of the exemption;  
158 providing a statement of public necessity; providing  
159 an effective date.

By the Committees on Governmental Oversight and Accountability;  
and Criminal Justice; and Senators Smith and Thompson

585-02410-15

2015248c2

1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 119.071, F.S.; defining the terms "body camera" and  
4 "personal representative"; providing that a body  
5 camera recording is confidential and exempt from  
6 public records requirements under certain  
7 circumstances; providing exceptions; requiring a law  
8 enforcement agency to retain body camera recordings  
9 for at least a specified period; providing for  
10 retroactive application; providing for future  
11 legislative review and repeal of the exemption;  
12 providing a statement of public necessity; providing  
13 an effective date.

14

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

16

17 Section 1. Paragraph (1) is added to subsection (2) of  
18 section 119.071, Florida Statutes, to read:

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

21 (2) AGENCY INVESTIGATIONS.—

22 (1)1. As used in this paragraph, the term:

23 a. "Body camera" means a portable electronic recording  
24 device that is worn on a law enforcement officer's body and that  
25 records audio and video data of the officer's activities.

26 b. "Personal representative" means a parent of, a court-  
27 appointed guardian of, or a person holding a power of attorney  
28 for a person recorded by a body camera, or an attorney for such  
29 person. If a person depicted in the recording is deceased, the

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

585-02410-15

2015248c2

30 term also means the personal representative of the estate of the  
31 deceased person; the deceased person's surviving spouse, parent,  
32 or adult child; the parent or guardian of a surviving minor  
33 child of the deceased; or an attorney for such person.

34 2. A body camera recording is confidential and exempt from  
35 s. 119.07(1) and s. 24 (a), Art. I of the state constitution if  
36 the recording:

37 a. Is taken within the interior of a private residence;  
38 b. Is taken on the property of a facility that offers  
39 health care, mental health care, or social services;  
40 c. Is taken at the scene of a medical emergency;  
41 d. Is taken in a place where a person recorded or depicted  
42 in the recording has a reasonable expectation of privacy.

43 3. A body camera recording, or a portion thereof, shall be  
44 disclosed by a law enforcement agency:

45 a. In furtherance of its official duties and  
46 responsibilities;

47 b. To another governmental agency in the furtherance of its  
48 official duties and responsibilities;

49 c. Pursuant to a court order;

50 d. To a person recorded by a body camera; however, a law  
51 enforcement agency may disclose only those portions that are  
52 relevant to the person's presence in the recording; or  
53 e. To the personal representative of a person recorded by a  
54 body camera; however, a law enforcement agency may disclose only  
55 those portions that are relevant to the represented person's  
56 presence in the recording.

57 4. A law enforcement agency must retain a body camera  
58 recording for at least 90 days.

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585-02410-15

2015248c2

59 5. The exemption provided in subparagraph 2. applies  
 60 retroactively.

61 6. This paragraph is subject to the Open Government Sunset  
 62 Review Act in accordance with s. 119.15 and shall stand repealed  
 63 on October 2, 2020, unless reviewed and saved from repeal  
 64 through reenactment by the Legislature.

65 Section 2. The Legislature finds that it is a public  
 66 necessity that body camera recordings are confidential and  
 67 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
 68 Article I of the State Constitution. The Legislature finds that  
 69 information recorded by body cameras is significantly more  
 70 likely to capture highly sensitive personal information than  
 71 other law enforcement recordings or documents. The Legislature  
 72 finds that public disclosure of these recordings could have an  
 73 undesirable chilling effect. People who know that they are being  
 74 recorded by a body camera may be unwilling to fully cooperate  
 75 with law enforcement officers if they know that a body camera  
 76 recording can be made available to anyone in the public. People  
 77 may also be less likely to call a law enforcement agency for  
 78 services if their sensitive personal information or the  
 79 circumstances that necessitate a law enforcement agency's  
 80 involvement are subject to public dissemination as a body camera  
 81 recording. The Legislature also finds that body camera  
 82 recordings could be used for criminal purposes if they were  
 83 available upon request. This exemption from public records  
 84 requirements allows law enforcement officers to more effectively  
 85 and efficiently administer their duties, which would otherwise  
 86 be significantly impaired. The Legislature finds that these  
 87 concerns regarding the impact of the public records requirements

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585-02410-15

2015248c2

88 for body camera recordings not only necessitate the exemption of  
 89 the recordings from public records requirements but also  
 90 outweigh any public benefit that may be derived from the  
 91 disclosure of the recordings.

92 Section 3. This act shall take effect July 1, 2015.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 17, 2015

---

I respectfully request that **Senate Bill #248**, relating to Public Records/Audio or Video Recording Made by a Law Enforcement Officer, be placed on the:

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

A handwritten signature in black ink, appearing to read "Christopher L. Smith", written over a horizontal line.

Senator Christopher L. Smith  
Florida Senate, District 31

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-15

Meeting Date

~~SB 0248~~

Bill Number (if applicable)

108082

Amendment Barcode (if applicable)

Topic Body Cameras

Name Frank Fabrizio

Job Title Police Chief

Address P.O. Box 14038  
Street

Phone 850219-3631

TALLAHASSEE FL 32317  
City State Zip

Email FFABRIZIO@ponce-inlet.org

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.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

April 2, 2015

*Meeting Date*

248

*Bill Number (if applicable)*

Topic Juvenile Justice

*Amendment Barcode (if applicable)*

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Phone 850.488.6850

*Street*

Tallahassee

Florida

32301

Email dlamonica@comcast.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/15

Meeting Date

SB 248

Bill Number (if applicable)

Topic SB 248

Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Dir. of Public Policy

Address 4500 Biscayne Blvd #340

Phone 786-363-2700

Miami FL 33137

City

State

Zip

Email mrichardson@aclufl.org

Speaking:  For  Against  Information

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

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/21/15  
Meeting Date

248  
Bill Number (if applicable)

Topic Body Camera

Amendment Barcode (if applicable)

Name Sheriff Bob Guatieri

Job Title Pinellas County Sheriff

Address 10750 Ulmerton Rd  
Street

Phone 727-532-6200

Largo FL 34677  
City State Zip

Email rguati@pinellas.gov

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/15  
Meeting Date

248  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Pamela Burch Fort

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

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking:  For  Against  Information

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

Representing STATE Conference of NAACP

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)

4/2/2015

Meeting Date

SB 248  
Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Kathleen Russell

Job Title Dir of Gov. Relations

Address 400 S. Orange Ave  
Street

Phone (407) 383 2075

Orlando FL 32801  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing City of Orlando

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)

4/2/2015

Meeting Date

248

Bill Number (if applicable)

Topic Public Records Exemption for Body Cameras

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard Street

Phone 850-222-3329

Street

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-2-15

Meeting Date

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

248

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASST COUNTY ATTORNEY

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street MIAMI 33128

Email JMM2@MIAMIDOC.GOV

City State Zip

Speaking:  For  Against  Information

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

Representing MIAMI-DADE 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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 466

INTRODUCER: Regulated Industries Committee and Senator Flores

SUBJECT: Low-voltage Alarm Systems

DATE: April 1, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Kraemer</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 466 amends the definition of Low-voltage Alarm Systems, reduces the maximum permit fee for those systems, and eliminates permit requirements for wireless burglar alarms and smoke detectors. Any electrical device or signaling device used to signal or detect a burglary, fire, robbery, or medical emergency is an alarm system. A system that is hardwired and operates at low voltage (with or without home-automation equipment, thermostats, and video cameras) is a low-voltage alarm system. The bill excludes wireless alarm systems (burglar alarms and smoke detectors) from all permitting requirements of any local enforcement agency with jurisdiction over building inspections and code enforcement, such as a local government, school board, community college, or university.

In addition to providing that permits may not be required in order to install, maintain, inspect, replace or service wireless alarm systems, the bill reduces the maximum charge for a uniform basic permit for a hardwired, low-voltage alarm system from \$55 to \$40. The bill deletes permit fee provisions that expired on January 1, 2015. The bill prohibits a local enforcement agency from requiring the payment of any additional amount associated with the installation or replacement of a hardwire, low-voltage alarm system. The bill authorizes local enforcement agencies to coordinate inspections with the owner or customer of low-voltage alarm system projects to ensure compliance with applicable codes and standards. However, the obligation to take corrective action if a project fails an inspection remains with the alarm system contractor.

The bill provides a July 1, 2015, effective date.

## II. Present Situation:

Part II of ch. 489, F.S., regulates electrical and alarm system contracting. An alarm system is any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.<sup>1</sup> Licensure of electrical and alarm systems contractors is required, and applicants must have sufficient technical experience and be tested on technical and business matters.

Section 489.505, F.S., contains references to various types of contractors that may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems. An alarm system contractor means a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.<sup>2</sup> The term also means any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.<sup>3</sup>

An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an alarm system contractor I; the business of an alarm system contractor II is identical except that it does not include fire alarm systems.<sup>4</sup>

Alarm system contractors may also hold certificates of competency from the Department of Business and Professional Regulation, which are geographically unlimited.<sup>5</sup> Holders of those certificates are certified alarm system contractors, and the scope of certification is limited to specific alarm circuits and equipment.<sup>6</sup> There is no mandatory licensure requirement created by the availability of certification.<sup>7</sup>

A certified electrical contractor, a certified fire alarm system contractor, a registered fire alarm system contractor, a journeyman electrician licensed by any local jurisdiction, or an alarm technician licensed by a local jurisdiction that requires an examination and experience or training as licensure qualifications, is not required to complete the training required for fire alarm system agents. A registered electrical contractor is not required to complete the training, provided he or she is only doing electrical work up to the alarm panel.<sup>8</sup>

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<sup>1</sup> See s. 489.505(1), F.S.

<sup>2</sup> See s. 489.505(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See ss. 489.505(4) and 489.505(5), F.S.

<sup>6</sup> Section 489.505(7), F.S., describes the limitations as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks.

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

<sup>8</sup> See s. 489.5185(2), F.S.

Part II of ch. 553, F.S., constitutes the Florida Building Codes Act (act). The act provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code, consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements, for effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer.<sup>9</sup>

Pursuant to s. 553.88, F.S., the current edition of the following standards are in effect for the purpose of establishing minimum electrical and alarm standards in Florida:

- National Electrical Code, NFPA<sup>10</sup> No. 70;
- Underwriters' Laboratories, Inc. (UL), Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps, UL 57 and UL 153;
- Underwriters' Laboratories, Inc., Standard for Electric Signs, UL 48;
- The provisions of the following which prescribe minimum electrical and alarm standards:
  - NFPA No. 56A, Inhalation Anesthetics;
  - NFPA No. 56B, Respiratory Therapy;
  - NFPA No. 56C, Laboratories in Health-related Institutions;
  - NFPA No. 56D, Hyperbaric Facilities;
  - NFPA No. 56F, Nonflammable Medical Gas Systems;
  - NFPA No. 72, National Fire Alarm Code;
  - NFPA No. 76A, Essential Electrical Systems for Health Care Facilities;
- The rules and regulations of the Department of Health, entitled "Nursing Homes and Related Facilities Licensure; and
- The minimum standards for grounding of portable electric equipment, ch. 8C-27, F.A.C., as recommended by the Division of Workers' Compensation, Department of Financial Services.

Section 553.71(5), F.S., provides that a local enforcement agency<sup>11</sup> is an agency with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities. A number of local governments require permitting or registration of burglar alarm systems, often to address the volume of false alarms reported to law enforcement. Local governments that may have permit requirements for burglar alarm systems include:

- The counties of Alachua, Lee, Martin, Palm Beach, and St. Lucie; and

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<sup>9</sup> See s. 553.72(1), F.S.

<sup>10</sup> NFPA is the acronym for the National Fire Protection Association, which is an international nonprofit organization established in 1896. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes, standards, research, training and education. NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility and effects of fire and other risks. See <http://www.nfpa.org/about-nfpa> (last visited Mar. 13, 2015).

<sup>11</sup> Section 553.71(5), F.S., of the Florida Building Codes Act defines local enforcement agency as an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

- The cities of Boca Raton, Cape Coral, Clearwater, Cutler Bay, Deerfield Beach, Doral, Gainesville, Hollywood, Largo, Miami, Miami Beach, Miami Gardens, Miramar, North Lauderdale, North Miami Beach, Palatka, Palm Bay, Pembroke Pines, Plantation, Pompano Beach, Riviera Beach, St. Petersburg, Sarasota, Sunny Isles, and West Palm Beach.<sup>12</sup>

Many of these local governments require a permit to be submitted to the local law enforcement agency. For example, the County of Palm Beach requires a permit to be submitted to the Palm Beach County Sheriff's Office with a \$25 application fee. The permit must be renewed annually. Failure to submit an application for a permit results in a "no response" to the alarm system and a fine of \$260.00 per "incident."<sup>13</sup> The purpose of these types of permits is to:

In concert with the county sheriff's office commitment to problem solving policing, the purpose of this article is to prevent false alarm activations that require the sheriff's office to respond. Deputies responding to false alarms are more wisely utilized preventing crime and solving neighborhood crime problems. This article is a cooperative effort among the board of county commissioners, the Alarm Association of Florida and the county sheriff's office to prevent false alarm activations in the most effective manner.<sup>14</sup>

One industry company report on fees for basic hardwire installation reflected that as of 2013, permitting fees ranged from \$25 to fees of several thousand dollars.<sup>15</sup> In accordance with the provisions of ch. 2013-203, Laws of Florida, as of October 1, 2013, the charges that could be made for low-voltage alarm system permits were limited. For local enforcement agencies that charged:<sup>16</sup>

- More than \$55 for those permits before January 1, 2013, the same amount could still be charged but only until January 1, 2015; and
- More than \$175 for those permits before January 1, 2013, only a maximum of \$175 could still be charged, but only until January 1, 2015.

After January 1, 2015, the maximum charge that may be imposed by any local enforcement agency is \$55.<sup>17</sup>

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<sup>12</sup> For a longer list, compiled by an alarm system industry merchant, see Geoarm, *Florida Alarm Monitoring Permits for Emergency Dispatch Services*, available at <http://www.geoarm.com/florida-alarm-monitoring-permits.html> (last visited Mar. 13, 2015).

<sup>13</sup> See [http://www.pbso.org/documents/Burglar\\_Alarm\\_Permit\\_Form.pdf](http://www.pbso.org/documents/Burglar_Alarm_Permit_Form.pdf) (Last visited Mar. 13, 2015) and Palm Beach County Ordinance 2008-038, codified at art. III, s. 16-51 et seq., Code of Ordinances, Palm Beach County, at [https://www.municode.com/library/fl/palm\\_beach\\_county/codes/code\\_of\\_ordinances?searchRequest=%7B%22searchText%22:%22part%20III,%20section%2016%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentTypes%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=PABECOCO\\_CH16LAEN\\_ARTIII.A](https://www.municode.com/library/fl/palm_beach_county/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22part%20III,%20section%2016%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentTypes%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=PABECOCO_CH16LAEN_ARTIII.A). (Last visited Mar. 13, 2015).

<sup>14</sup> Section 16-52, Purpose, Code of Ordinances, Palm Beach County.

<sup>15</sup> E-mail from Jorge Chamizo, Floridian Partners, LLC to B. Imhof, Staff Director (Apr. 7, 2013) (on file with the Senate Committee on Regulated Industries).

<sup>16</sup> See s. 553.793(4), F.S.

<sup>17</sup> *Id.*

### III. Effect of Proposed Changes:

The definition of a low-voltage alarm system project is amended to exclude wireless burglar alarm and smoke detector systems. The bill amends the requirements for permitting by a local enforcement agency, by providing that permits for the installation, maintenance, inspection, replacement or servicing of wireless burglar alarm and smoke detector systems are not required. Local enforcement agencies may not charge more than \$40 for a permit, and may not require any other charge, for installation or replacement of new or existing hardwired, low-voltage alarm system. The bill deletes permit fee provisions that expired on January 1, 2015.

The bill provides that a local enforcement agency may not request “any” information for issuance of labels for purchase by a contractor other than identification information and proof of registration or licensure as a contractor. Existing law states that local enforcement agencies may not require “the submission of information other than,” but the meaning of the phrase has been disputed, according to industry representatives.

The bill provides that a local enforcement agency may coordinate with the owner or customer to inspect a low-voltage alarm system project to ensure compliance with applicable codes and standards, but leaves intact the requirement that if the project fails inspections, corrective action must be undertaken by the alarm system contractor.

The bill provides that a municipality, county, district, or other entity of local government may not adopt or maintain in effect “any” ordinance or rule regarding a low-voltage alarm system project inconsistent with s. 553.793, F.S. Existing law states that those entities may not adopt or maintain in effect “an” ordinance or rule inconsistent with s. 553.793, F.S., but the meaning of the phrase has also been disputed, according to industry representatives.

### IV. Constitutional Issues:

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

The bill reduces the authority that counties have to raise revenues. Article VII, section 18(b) of the Florida Constitution requires any general law that reduces a local government’s authority to raise revenues in the aggregate to be passed by a two-thirds vote of the membership of each house of the Legislature unless certain exemptions apply.<sup>18</sup>

If the fiscal impact of the bill is insignificant, the bill would be exempt under Art. VII, s. 18(d) of the Florida Constitution. Although the Revenue Estimating Commission has not yet estimated the impact of this bill on local revenues, the impact of the bill may be insignificant. An insignificant fiscal impact means an amount not greater than ten cents times the average statewide population for the applicable fiscal year,<sup>19</sup> which equals approximately \$1.95 million.<sup>20</sup>

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<sup>18</sup> FLA. CONST. art. VII, s. 18(b).

<sup>19</sup> FLA. CONST. art. VII, s. 18(d)

<sup>20</sup> The population of Florida is reported as 19,507,369. University of Florida Bureau of Economic and Business Research, Population Studies Program, available at <http://www.bebr.ufl.edu/population> (last visited Mar. 13, 2015).

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill reduces the maximum amount that may be charged for a permit for a hardwired, low-voltage alarm system by \$15 (from \$55 to \$40), and prohibits any other charges for installation or replacement of such systems. The bill provides that no permits are required for burglar alarm systems or smoke detectors that are not hardwired (wireless alarms and detectors). This will reduce or eliminate permitting costs associated with these systems and detectors.

**C. Government Sector Impact:**

Revenues of local enforcement agencies may be impacted by the elimination of permitting fees for wireless alarm systems (burglar alarms and smoke detectors), and the reduction in the maximum charge (from \$55 to \$40 each) that may be made for a permit for a hardwired low-voltage alarm system. The Department of Business and Professional Regulation estimates no fiscal impact to state government.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A possible conflict with the requirements of the Florida Building Code regarding smoke detectors has been noted by the Department of Business and Professional Regulation.<sup>22</sup> The Florida Building Code, 5th Edition (2014) (the 2014 Florida Building Code), as updated by the Florida Building Commission on November 13, 2014, has been adopted as the building code for the State of Florida, with an effective date of June 30, 2015.<sup>23</sup> The 2014 Florida Building Code is copyrighted, but is available for public inspection and examination at the Department of State.<sup>24</sup>

<sup>21</sup> See Department of Business and Professional Regulation, *Legislative Bill Analysis for HB 413* (Feb. 9, 2015), at page 3.

<sup>22</sup> *Id.* at page 2, referencing the “2010 Florida Building Code, Residential.”

<sup>23</sup> See Rule 61G20-1.001, F.A.C., at <https://www.flrules.org/gateway/ruleNo.asp?id=61G20-1.001> (last visited Mar. 13, 2015).

<sup>24</sup> *Id.* A draft of the 2014 Florida Building Code has been made available in a read-only format by the International Code Council, Inc. (ICC) at [http://ecodes.biz/ecodes\\_support/free\\_resources/14FloridaDraft/Building/14FL\\_Building\\_Draft.html](http://ecodes.biz/ecodes_support/free_resources/14FloridaDraft/Building/14FL_Building_Draft.html)

Part IV of ch. 553, F.S., is titled as the Florida Building Codes Act.<sup>25</sup> The bill does not eliminate the requirements set forth in the current or forthcoming 2014 Florida Building Code regarding smoke alarms, as to whether they must be hardwired or may be powered by battery. In the event that a wireless alarm system is installed by an alarm systems contractor, no permit fee may be imposed by the local enforcement agency. However, the local enforcement agency has jurisdiction to regulate building construction and may determine that a wireless alarm system does not meet the requirements of the Florida Building Code in effect.<sup>26</sup>

#### **VIII. Statutes Affected:**

This bill substantially amends section 553.793 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 Regulated Industries on March 4, 2015:**

Prohibits a local enforcement agency from requiring the payment of any additional amount associated with the installation or replacement of a hardwire, low-voltage alarm system.

- B. **Amendments:**

None.

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

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(last visited Mar. 13, 2015). The ICC was founded in 1994 by the Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI). As regional building codes began to lose their usefulness in a national context, the ICC developed International Codes, which are a set of comprehensive, coordinated building safety and fire prevention codes.

<sup>25</sup> See ss. 553.70 through 553.898, F.S.

<sup>26</sup> See s. 553.80, F.S.

By the Committee on Regulated Industries; and Senator Flores

580-01940-15

2015466c1

A bill to be entitled

An act relating to low-voltage alarm systems; amending s. 553.793, F.S.; revising the definition of the term "low-voltage alarm system project" and adding the definition of the term "wireless alarm system"; providing that a permit is not required to install, maintain, inspect, replace, or service a wireless alarm system and its ancillary components; reducing the maximum price for permit labels for alarm systems; prohibiting a local enforcement agency from requiring the payment of any additional fees, charges, or expenses associated with the installation or replacement of a new or existing alarm system; authorizing a local enforcement agency to coordinate the inspection of certain alarm system projects; providing an effective date.

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

Section 1. Subsections (1), (2), (4), (8), and (9) of section 553.793, Florida Statutes, are amended to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

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

(a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) "Low-voltage alarm system project" means a project

Page 1 of 3

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

580-01940-15

2015466c1

related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, that is hardwired and operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition, and ancillary components or equipment attached to such a system, including, but not limited to, home-automation equipment, thermostats, and video cameras.

(c) "Wireless alarm system" means a burglar alarm system or smoke detector that is not hardwired.

(2) Notwithstanding any provision of law, this section applies to all low-voltage alarm system projects for which a permit is required by a local enforcement agency. However, a permit is not required to install, maintain, inspect, replace, or service a wireless alarm system, including any ancillary components or equipment attached to the system.

(4) A local enforcement agency shall make uniform basic permit labels available for purchase by a contractor to be used for the installation or replacement of a new or existing alarm system at a cost of not more than \$40 ~~\$55~~ per label per project per unit. The local enforcement agency may not require the payment of any additional fees, charges, or expenses associated with the installation or replacement of a new or existing alarm system. However, a local enforcement agency charging more than \$55, but less than \$175, for such a permit as of January 1, 2013, may continue to charge the same amount for a uniform basic permit label until January 1, 2015. A local enforcement agency charging more than \$175 for such a permit as of January 1, 2013, may charge a maximum of \$175 for a uniform basic permit label until January 1, 2015.

Page 2 of 3

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

580-01940-15

2015466c1

59 (a) A local enforcement agency may not require a  
60 contractor, as a condition of purchasing a label, to submit any  
61 information other than identification information of the  
62 licensee and proof of registration or certification as a  
63 contractor.

64 (b) A label is valid for 1 year after the date of purchase  
65 and may only be used within the jurisdiction of the local  
66 enforcement agency that issued the label. A contractor may  
67 purchase labels in bulk for one or more unspecified current or  
68 future projects.

69 (8) A local enforcement agency may coordinate directly with  
70 the owner or customer to inspect a low-voltage alarm system  
71 project ~~may be inspected by the local enforcement agency to~~  
72 ensure compliance with applicable codes and standards. If a low-  
73 voltage alarm system project fails an inspection, the contractor  
74 must take corrective action as necessary to pass inspection.

75 (9) A municipality, county, district, or other entity of  
76 local government may not adopt or maintain in effect any ~~an~~  
77 ordinance or rule regarding a low-voltage alarm system project  
78 that is inconsistent with this section.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Fiscal Policy, *Chair*  
Appropriations  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Ethics and Elections  
Finance and Tax  
Health Policy  
Regulated Industries

### SENATOR ANITERE FLORES

37th District

April 2, 2015

The Honorable David Simmons  
Chair of Senate Rules Committee  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

4/2/15  
OK  
AKS

Dear Chair Simmons:

Due to a scheduling conflict, I request that in my absence, my legislative assistant, William McRea present SB 466.

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

Sincerely,

*Anitere Flores*  
Anitere Flores

CC: John Phelps, Staff Director, Rules Committee, 402 Senate Office Building

REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

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

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 24, 2015

---

I respectfully request that **Senate Bill #466**, relating to Low-Voltage Alarm Systems, be placed on the:

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

*Anitere Flores*

---

Senator Anitere Flores  
Florida Senate, District 37

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-15  
Meeting Date

4660  
Bill Number (if applicable)

Topic Low Voltage Alarms

Amendment Barcode (if applicable)

Name Casey Reed

Job Title State Director - Leg. Affairs

Address 150 E. College Ave  
Street

Phone 850 591-6002

Tallahassee FL 32301  
City State Zip

Email CR824B@ATT.com

Speaking:  For  Against  Information

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

Representing AT & T

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)

4/2/2015

Meeting Date

466

Bill Number (if applicable)

Topic Low Voltage Alarms

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street Tallahassee FL 32301  
City State Zip

Email jorge@flapartners.com

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida & ADT

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)

4.12.2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 486  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 562

INTRODUCER: Senator Simpson

SUBJECT: Growth Management

DATE: April 1, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	<b>Favorable</b>
3.	<u>Stearns</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

**I. Summary:**

SB 562 removes the state mandate that new developments surpassing certain thresholds and standards be subjected to the development of regional impact review process. The bill shifts comprehensive plan amendments related to such developments from the Expedited State Review Process to the State Coordinated Review Process.

**II. Present Situation:**

**Development of Regional Impact Background**

A development of regional impact (DRI) is defined in s. 380.06, F.S., as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.<sup>1</sup> Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed moment that brought truly modern planning requirements into force. In recognition of this fact,

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<sup>1</sup> Section 380.07(2), F.S.

the Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) in their local plans.<sup>2</sup> After much controversy, this recommendation never fully came to fruition and the DRI program continued in its previous form. The Legislature has enacted a number of exemptions to the DRI program since that time, but never fully removed it as originally intended.

### **DRI Review**

All developments that meet the DRI thresholds and standards provided by statute<sup>3</sup> and rules adopted by the Administration Commission<sup>4</sup> are required to undergo DRI review, unless the Legislature has provided an exemption for that particular type of project, the development is located within a “dense urban land area,”<sup>5</sup> or the development is located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area. The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, and recreational vehicle developments.<sup>6</sup> Over the years, the Legislature has enacted new exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.

Florida’s 11 RPCs coordinate the multi-agency review of proposed DRIs. A DRI review is begun by a developer contacting the RPC with jurisdiction over a proposed development to arrange a pre-application conference.<sup>7</sup> The developer or the RPC may request other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that the agency will require in the application to assess those issues. At the pre-application conference, the RPC provides the developer with information about the DRI process and uses the pre-application conference to identify issues and to coordinate the appropriate state and local agency requirements.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval. If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant.

Upon completion of the pre-application conference with all parties, the developer files an application for development approval with the local government, the RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.<sup>8</sup>

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<sup>2</sup> See Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.

<sup>3</sup> Section 380.0651, F.S.

<sup>4</sup> Rule 28-24, F.A.C.

<sup>5</sup> The criteria for qualification as a dense urban land area are contained in s. 380.06(29), F.S. Currently, eight counties and 243 cities qualify as dense urban land areas that are exempt from the DRI program.

<sup>6</sup> Section 380.0651, F.S.

<sup>7</sup> Section 380.06(7), F.S.

<sup>8</sup> Section 380.06(10), F.S.

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days.<sup>9</sup> Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.<sup>10</sup> The RPC is required to identify regional issues specifically examining the extent to which:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
- The development will significantly impact adjacent jurisdictions; and
- In reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.<sup>11</sup>

If the proposed project will have impacts within the purview of other state agencies, those agencies will also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.<sup>12</sup> When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.<sup>13</sup> Finally, the state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.<sup>14</sup>

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which:

- The development is consistent with its comprehensive plan and land development regulations;
- The development is consistent with the report and recommendations of the RPC; and
- The development is consistent with the state comprehensive plan.<sup>15</sup>

Within 30 days of the public hearing on the application for development approval, the local government must decide whether to issue a development order or not. Within 45 days after a development order is or is not rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land

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<sup>9</sup> Section 380.06(11), F.S.

<sup>10</sup> Section 380.06(12), F.S.

<sup>11</sup> Section 380.06(12)(a), F.S.

<sup>12</sup> Section 380.06(12)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> See Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.

<sup>15</sup> Section 380.06(13), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.

and Water Adjudicatory Commission.<sup>16</sup> An “aggrieved or adversely affected party” may appeal and challenge the consistency of a development order with the local comprehensive plan.<sup>17</sup>

Completion of this entire process can take one to two years and require the expenditure of significant resources, both on the part of private developers and state agencies, resulting in costs totaling in the millions of dollars.

### **Comprehensive Plans and the Comprehensive Plan Amendment Process**

Completion of the DRI process does not give a developer final authority to build. Rather, the permitting local government almost always must also approve an amendment to its local comprehensive plan prior to construction, and the developer must still obtain all requisite permits.

In 1985, the Florida Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development. A locality’s comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.<sup>18</sup> The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies.<sup>19</sup> These are the same agencies that are required to review proposed DRIs, including the DEO, the relevant RPC, and adjacent local governments that request to participate.<sup>20</sup>

Similar to the DRI process, the state agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for “extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region” as well as adverse effects on regional resources or facilities.<sup>21</sup> Upon receipt of the reports from the various agencies the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.<sup>22</sup> The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.<sup>23</sup>

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<sup>16</sup> Section 380.07(2), F.S.

<sup>17</sup> Section 163.3215, F.S.

<sup>18</sup> Section 163.3174(4)(a), F.S.

<sup>19</sup> Section 163.3184, F.S.

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

<sup>21</sup> Section 163.3184(3)(b)3.a., F.S.

<sup>22</sup> Section 163.3184, F.S.

<sup>23</sup> *Id.*

### **The Expedited State Review Process vs. the State Coordinated Review Process**

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments. Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency

### **The Intergovernmental Coordination Element of a Comprehensive Plan.**

Every local government is required to have adopted an Intergovernmental Coordination Element (ICE) into its comprehensive plan.<sup>24</sup> This element is required to demonstrate consideration of the effects of the local plan upon the development of adjacent jurisdictions.<sup>25</sup> It must describe joint processes for collaborative planning and decision-making with regard to the location and extension of public facilities subject to concurrency and the siting of facilities with countywide significance, among other things.<sup>26</sup>

The statutory ICE provisions contain another requirement that is key to effective implementation of interlocal coordination in comprehensive planning and growth management; i.e., that all local governments establish interlocal agreements covering certain topics.<sup>27</sup> The interlocal agreement must:<sup>28</sup>

- Establish joint processes to facilitate coordination;
- Ensure that the local government addresses through coordination mechanisms the impacts of development proposed in the comprehensive plan upon development in adjacent jurisdictions; and
- Ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

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

**Section 1** amends s. 163.3184, F.S., to require a comprehensive plan amendment related to a development that qualifies as development of regional impact pursuant to s. 380.06, F.S., to be reviewed under the State Coordinated Review Process.

**Section 2** amends s. 380.06, F.S., to provide that new developments will not be subject to the DRI review requirements provided by s. 380.06, F.S. However, already existing developments of regional impact will continue to be governed by s. 380.06, F.S.

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<sup>24</sup> Section 163.3177(6), F.S.

<sup>25</sup> Section 163.3177(6)(h)1., F.S.

<sup>26</sup> Section 163.3177(6)(h)2., F.S.

<sup>27</sup> Section 163.3177(6)(h)3., F.S.

<sup>28</sup> *Id.*

**Section 3** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will prevent future developments from being required by state law to undergo the DRI review process, which could reduce costs for those types of developments that would otherwise have qualified as a DRI.

C. Government Sector Impact:

This bill will reduce the number of duplicative reviews that state agencies must perform with relation to the same developments. This could result in cost savings for those state agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.3184 and 380.06.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Simpson

18-01016-15

2015562\_\_

1 A bill to be entitled  
 2 An act relating to growth management; amending s.  
 3 163.3184, F.S.; requiring plan amendments proposing a  
 4 development that qualifies as a development of  
 5 regional impact to be subject to the state coordinated  
 6 review process; amending s. 380.06, F.S.; providing  
 7 that new proposed developments are subject to the  
 8 state coordinated review process and not the  
 9 development of regional impact review process;  
 10 providing an effective date.

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

13  
 14 Section 1. Paragraph (c) of subsection (2) of section  
 15 163.3184, Florida Statutes, is amended to read:  
 16 163.3184 Process for adoption of comprehensive plan or plan  
 17 amendment.—  
 18 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—  
 19 (c) Plan amendments that are in an area of critical state  
 20 concern designated pursuant to s. 380.05; propose a rural land  
 21 stewardship area pursuant to s. 163.3248; propose a sector plan  
 22 pursuant to s. 163.3245; update a comprehensive plan based on an  
 23 evaluation and appraisal pursuant to s. 163.3191; propose a  
 24 development that qualifies as a development of regional impact  
 25 pursuant to s. 380.06 ~~s. 380.06(24)(x)~~; or are new plans for  
 26 newly incorporated municipalities adopted pursuant to s.  
 27 163.3167 shall follow the state coordinated review process in  
 28 subsection (4).  
 29 Section 2. Subsection (30) is added to section 380.06,

Page 1 of 2

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

18-01016-15

2015562\_\_

30 Florida Statutes, to read:  
 31 380.06 Developments of regional impact.—  
 32 (30) NEW PROPOSED DEVELOPMENTS.—A new proposed development  
 33 otherwise subject to the review requirements of this section  
 34 shall be approved by a local government pursuant to s.  
 35 163.3184(4) in lieu of proceeding in accordance with this  
 36 section.  
 37 Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓

**COMMITTEES:**  
Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**  
18th District

March 19, 2015

Honorable David Simmons  
Committee on Rules  
402 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Simmons,

Please place Senate Bill 562 on Growth Management, on the next Committee on Rules.

Please contact my office with any questions. Thank you.

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

Wilton Simpson

Senator, 18<sup>th</sup> District

CC: John Phelps, Staff Director

**REPLY TO:**

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/15

Meeting Date

562

Bill Number (if applicable)

Topic DRI / growth management

Amendment Barcode (if applicable)

Name CHARLES PATTISON

Job Title POLICY DIRECTOR

Address 308 N. MONROE

Phone 222-6277

Street

TALLAHASSEE

32301

Email cpattison@1000fot.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing 1000 FRIENDS OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/12/15  
Meeting Date

562  
Bill Number (if applicable)

Topic DRI (Growth Mgt)

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Asst. Leg Dir.

Address 100 Monroe St.  
Street

Phone 9224300

Toll FL  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Assoc. Counties

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)

4/2/15

Meeting Date

562

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757  
Street

Phone 701-3676

Tallahassee FL 32302  
City State Zip

Email DCR02@flcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/2/15  
Meeting/Date

562  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300  
Street

Phone 222-7500

Tallahassee FL 32301  
City State Zip

Email ghunter@hgsllaw.com

Speaking:  For  Against  Information

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

Representing Association of Florida Community Developers

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)

4-2-15  
Meeting Date

SA 562  
Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name KARI HERBANK

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

Address 113 EAST COLLEGE AVE  
Street

Phone \_\_\_\_\_

TALLAHASSEE FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA HOME BUILDERS

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)

4/2/15

Meeting Date

SB 562

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757

Phone 701-3674

Street

Tallahassee FL 32302

City

State

Zip

Email DCRUZ@FCCities.com

Speaking:  For  Against  Information

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

Representing Florida League of cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/CS/CS/SB 1094

INTRODUCER: Rules Committee; Community Affairs Committee; Banking and Insurance Committee;  
and Senator Brandes

SUBJECT: Peril of Flood

DATE: April 2, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Matiyow/Knudson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1094 requires coastal management plans to include the reduction of flood risks and losses, creates new requirements related to flood elevation certificates, and revises requirements related to flood insurance.

The bill requires local governments to include development and redevelopment principles, strategies, and engineering solutions that reduce flood risks and losses within coastal areas in their comprehensive coastal management plan.

The bill requires surveyors or mappers that complete an elevation certificate to submit a copy of the certificate to the Division of Emergency Management within 30 days of its completion.

The bill allows insurers to sell flexible flood insurance coverage which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Being in an agreed upon amount between the insurer and policyholder.
- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.

- Excluding coverage for personal property or contents.

The bill removes current law prohibiting a supplemental flood insurance policy from being used for excess coverage over any other insurance policy covering the peril of flood. The bill clarifies that the declarations page or face page of a flood insurance policy must prominently note the deductibles and coverage limits of the policy.

The bill also allows an insurer to request from the Office of Insurance Regulation a certification that acknowledges that the insurer provides a flood policy, contract, or endorsement that equals or exceeds flood coverage by the National Flood Insurance Program.

## II. Present Situation:

### National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by passage of the National Flood Insurance Act of 1968.<sup>1</sup> The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.<sup>2</sup>

#### *Standard NFIP Flood Insurance*

The standard flood insurance policy dwelling form offered by the NFIP<sup>3</sup> is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost value,<sup>4</sup> actual cash value, or the policy limit.<sup>5</sup> The maximum coverage limit for a NFIP standard flood insurance policy is \$250,000. The NFIP also offers up to \$100,000 in personal property (contents) coverage, which is always valued at the actual cash value.<sup>6</sup> Most NFIP policies also include Increased Cost of Compliance coverage of up to \$30,000 of the cost to comply with state or community floodplain management laws or ordinances after a flood in

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<sup>1</sup> <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed by staff on March 18, 2015).

<sup>2</sup> *National Flood Insurance Program: Program Description*, pgs. 2-4., Federal Emergency Management Agency/Federal Insurance and Mitigation Administration (August 1, 2002) <http://www.fema.gov/media-library/assets/documents/1150?id=1480> (Last accessed by staff on March 18, 2015).

<sup>3</sup> The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings.

<sup>4</sup> To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

<sup>5</sup> *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) [http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f\\_679\\_summaryofcoverage\\_11\\_2012.pdf](http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf) (Last accessed by staff on March 18, 2015).

<sup>6</sup> See footnote 4.

which a building has been declared substantially damaged or repetitively damaged.<sup>7</sup> The maximum coverage available to a condominium association is \$250,000 per unit multiplied by the total number of units.<sup>8</sup> The limits of coverage for NFIP flood insurance on non-residential buildings are \$500,000 in coverage to the building and \$500,000 in contents coverage.<sup>9</sup>

Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.<sup>10</sup>

The minimum deductibles for NFIP flood coverage are:

- For properties built before the effective date of the first Flood Insurance Rate Map<sup>11</sup> (FIRM) for a community, the minimum deductible is:
  - \$1,500 if the property is insured for \$100,000 or less.
  - \$2,000 if the property is insured for over \$100,000.
- For properties built after the effective date of the first FIRM for a community, the minimum deductible is:
  - \$1,000 if the property is insured for \$100,000 or less.
  - \$1,250 if the property is insured for over \$100,000.

### ***Elevation Certificates***

The NFIP elevation certificate is used to provide elevation information necessary to ensure compliance to community floodplain management ordinances, to determine the proper insurance premium rate, or to support a request for a Letter of Map Amendment.<sup>12</sup> As part of the agreement for making flood insurance available in a community, the NFIP requires each community to adopt floodplain management regulations that specify minimum requirements for reducing flood losses.<sup>13</sup> One such requirement is for the community to obtain the elevation of the lowest floor (including basement) of all new and substantially improved buildings, and maintain a record of

<sup>7</sup> The total amount of a building claim and ICC claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is the \$250,000 maximum limit on coverage to the building. See footnote 4 and footnote 5 at page 26.

<sup>8</sup> *FDIC Compliance Manual*, V – 6.8. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on March 18, 2015).

<sup>9</sup> *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-2. <http://www.fema.gov/media-library/assets/documents/1012> (Last accessed by staff on March 18, 2015).

<sup>10</sup> <http://www.fema.gov/national-flood-insurance-program/definitions> (Last accessed by staff on March 18, 2015).

<sup>11</sup> The effective date of the first FIRM for Florida communities can be found at <http://www.fema.gov/cis/FL.pdf> (Last accessed by staff on March 18, 2015).

<sup>12</sup> <https://www.fema.gov/media-library/assets/documents/160> (Last accessed by staff on March 18, 2015).

<sup>13</sup> Federal Emergency Management Agency, *National Flood Insurance Program Elevation Certificate and Instructions Form 086-0-33* (2012).

such information.<sup>14</sup> The elevation certificate provides a way for a community to document compliance with the community's floodplain management ordinance.

### ***Federal Requirements to Obtain Flood Insurance***

The U.S. Congress passed the Flood Disaster Protection Act in 1973.<sup>15</sup> The Act mandated property owners with mortgages issued by federally regulated or insured lenders must purchase flood insurance if their properties are located in Special Flood Hazard Areas. Special Flood Hazard Areas are defined by FEMA as high-risk areas where there is at least a one in four chance of flooding during a 30-year mortgage.<sup>16</sup>

The National Flood Insurance Reform Act of 1994<sup>17</sup> (1994 Reform Act) required federal financial regulatory agencies<sup>18</sup> to revise their flood insurance regulations. The 1994 Reform Act applied flood insurance requirements to loans purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and to agencies that provide government insurance or guarantees such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration. Lending institutions regulated by federal agencies are prohibited from offering loans on properties located in a Special Flood Hazard Area of a community participating in the NFIP unless the property is covered by flood insurance.<sup>19</sup> The amount of flood insurance required by lending institutions must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.

### ***The Biggert-Waters Flood Insurance Reform Act***

In 2012<sup>20</sup> the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the NFIP for 5 years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how FIRM updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy

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<sup>14</sup> See id.

<sup>15</sup> [http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm\\_acts.pdf](http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf) (Last accessed by staff on March 18, 2015).

<sup>16</sup> [http://www.floodsmart.gov/floodsmart/pages/flooding\\_flood\\_risks/defining\\_flood\\_risks.jsp](http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp) (Last accessed by staff on March 18, 2015).

<sup>17</sup> Title V of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

<sup>18</sup> Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

<sup>19</sup> *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on March 18, 2015).

<sup>20</sup> <http://www.fema.gov/flood-insurance-reform-act-2012> (Last accessed by staff on March 18, 2015).

is purchased. Policyholders whose communities adopt a new, updated FIRM that results in higher rates will experience a 5-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

### ***2014 Federal Flood Reform Bills***

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014 repealed and modified some provisions of the Biggert-Waters Act. The new law reduced the mandatory rate increases for subsidized properties from 25 percent annually to no less than 5 percent, generally not to increase more than 18 percent annually.<sup>21</sup> Properties that remain subject to the 25 percent annual increase include older business properties, older non-primary residences, severe repetitive loss properties, and pre-FIRM properties. The 20 percent annual phase in of premium increases after adoption of a new or updated FIRM was reduced to a maximum of no more than an 18 percent annual premium increase. The policyholder refunds were provided to policyholders whose rate increases were revised by the 2014 changes. Additional revisions included increasing the maximum flood insurance deductibles, directing FEMA to consider property specific flood mitigation in determining a full-risk rate, and creating the position of a Flood Insurance Advocate.

### **Flood Insurance in Florida**

#### ***NFIP Flood Insurance in Florida***

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.<sup>22</sup> This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately \$3.60 in premium for NFIP flood coverage for every \$1 received in claims payments.<sup>23</sup> The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, the property suffers severe, repeated flood losses, or a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

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<sup>21</sup> Federal Emergency Management Agency, Homeowner Flood Insurance Affordability Act Overview (April 3, 2014). (Last accessed by staff on March 9, 2015).

<sup>22</sup> Office of Insurance Regulation, *The Biggert-Waters Flood Insurance Reform Act of 2012*, (Presentation to the Florida Senate Banking and Insurance Committee on October 8, 2013). [http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket\\_2346.pdf](http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2346.pdf) (Last accessed by staff on March 18, 2015).

<sup>23</sup> Wharton Center for Risk Management and Decision Processes, *Who's Paying and Who's Benefiting Most From Flood Insurance Under the NFIP? A Financial Analysis of the U.S. National Flood Insurance Program (NFIP)*, (Issue Brief, Fall 2011).

### ***Private Market Flood Insurance in Florida***

The 2014 Legislature enacted CS/CS/CS/SB 542, governing the sale of personal lines residential flood insurance. Authorized insurers may sell four different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined in the bill (which is the same definition used by the NFIP). The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.
- Preferred coverage, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood in the bill.
- Customized coverage, which is coverage that is broader than standard flood coverage.
- Supplemental coverage, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses. It does not include excess flood coverage over other flood policies.

Insurers must provide prominent notice on the policy declarations page or face page of deductibles and any other limitations on flood coverage or policy limits. Insurance agents that receive a flood insurance application must obtain a signed acknowledgement from the applicant stating that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the NFIP.

An insurer may establish flood rates through the standard process in s. 627.062, F.S. Alternatively, rates filed before October 1, 2019, may be established through a rate filing with the Office of Insurance Regulation (OIR) that is not required to be reviewed by the OIR before implementation of the rate (“file and use” review) or shortly after implementation of the rate (“use and file” review). Specifically, the flood rate is exempt from the “file and use” and “use and file” requirements of s. 627.062(2)(a), F.S. Such filings are also exempt from the requirement to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR may, however, examine a rate filing at its discretion. To enable the office to conduct such examinations, insurers must maintain actuarial data related to flood coverage for two years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate or unfairly discriminatory. The bill allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers that seek to write flood coverage in Florida must notify the OIR at least 30 days before doing so and file a plan of operation, financial projections, and any such revisions with the OIR. Surplus lines agents may export flood insurance without making a diligent effort to seek coverage from three or more authorized insurers until July 1, 2017. Citizens Property Insurance Corporation is prohibited from providing flood insurance and the Florida Hurricane Catastrophe Fund is prohibited from reimbursing flood losses.

## Local Government Comprehensive Planning and Coastal Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),<sup>24</sup> also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005, 2009 and 2011. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."<sup>25</sup> Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Economic Opportunity.

Local governments in coastal areas or contiguous to specified waters must include a coastal management element in their comprehensive plan.<sup>26</sup> The coastal management element must set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and program implementation. Section 163.3178, F.S., requires coastal management to be based on studies, surveys, and data. The plan must contain a redevelopment component which outlines the principles which shall be used to eliminate inappropriate and unsafe development in coastal areas.<sup>27</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3178(2)(f), F.S., to require local governments when drafting their comprehensive coastal management plans to:

- Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.
- Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the FEMA.
- Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.
- Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.
- Require construction activities seaward of the coastal construction control lines established pursuant to s. 161.053, F.S., be consistent with ch. 161, F.S.

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<sup>24</sup> See Chapter 163, Part II, F.S.

<sup>25</sup> Section 163.3177(5), F.S.

<sup>26</sup> Section 163.3177(6)(g), F.S.

<sup>27</sup> Section 163.3178(2)(g), F.S.

- Encourage local governments to participate in the National Flood Insurance Program Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.

**Section 2** creates s. 195.088, F.S., to require surveyors and mappers to submit elevation certificates to the Division of Emergency Management (DEM). The bill defines an elevation certificate as the certificate used to demonstrate the elevation of property which has been developed by FEMA under federal floodplain management regulation or which is completed by a surveyor and mapper. The surveyor and mapper must complete the elevation certificate in accordance with the checklist adopted by DEM. A surveyor and mapper who completes an elevation certificate must submit a copy of the certificate to the DEM within 30 days of its completion.

**Section 3** amends s. 627.715, F.S., to allow insurers to sell flexible flood insurance, which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Being in an agreed upon amount between the insurer and policyholder.
- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.
- Excluding coverage for personal property or contents.

The section removes language in statute that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other insurance policy covering the peril of flood. Removing this language from law could allow a supplemental flood insurance policy to provide coverage in excess of other coverage that is insuring for the peril of flood.

The section clarifies that deductibles for flood coverage and flood insurance policy limits must be prominently noted on a policy's declarations page or face page.

The bill also clarifies the signed acknowledgement that a licensed insurance agent must obtain notifying the applicant about the potential loss of subsidized rates when discontinuing coverage from the NFIP. The notice is revised to specify that the policyholders who might lose subsidies are those who have subsidized NFIP policies.

Lastly, the section allows an insurer to request from the OIR a certification that acknowledges that the insurer provides a policy, contract, or endorsement for the flood insurance that provides coverage equaling or exceeding the flood coverage offered by the NFIP. A certified policy must be in compliance with 42 U.S.C. s. 1042a(b), which requires federally regulated lending institutions to accept private flood insurance that insures the building and personal property securing the loan for the term of the loan in an amount not less than the outstanding principal balance of the loan or the limit of NFIP flood insurance coverage, whichever is less. An insurer or its agent may reference or include such certification in advertising and communications with

an agent, a lending institution, an insured, and a potential insured. The authorized insurer may also include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage. A knowing misrepresentation that a flood insurance policy is certified is an unfair or deceptive act.

**Section 4** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders will have greater flexibility when purchasing flood insurance.

C. Government Sector Impact:

Local governments must include flood risks within their coastal management plan. There could be added costs to local governments for the added development of the plan and its enforcement.

Licensed surveyors and mappers must regularly submit elevation certificates to the DEM. The DEM must establish the schedule for regular submission of elevation certificates. The added cost to the department is unknown.

The OIR must establish a flood certification that is to be issued to companies that sell private flood insurance policies that are equal to or greater than the coverages in a policy sold by the NFIP.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.3178 and 627.715.

This bill creates section 195.088 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Rules on April 2, 2015:**

Requires local governments when drafting their comprehensive coastal management plans must:

- Require construction activities seaward of the coastal construction control lines established pursuant to s. 161.053, F.S., be consistent with ch. 161, F.S.
- Encourage local governments to participate in the National Flood Insurance Program Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.

**CS/CS by Community Affairs on March 23, 2015:**

Requires a redevelopment component of a coastal management element of a comprehensive plan to be consistent with, or more stringent than, the flood-resistant construction requirements of the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.

Deletes a requirement that flexible flood insurance be acceptable to the mortgage lender if the policy is intended to satisfy a mortgage requirement.

**CS by Banking and Insurance on March 10, 2015:**

Authorizes insurers to sell flexible flood insurance and specifies the requirements for such coverage.

- Specifies that insurers must credit excessive or unfairly discriminatory flood rates back to policyholders.
- Removes a requirement that county property appraisers submit elevation certificates to DEM; instead surveyors and mappers will make the submission.
- Deletes a bill provision that would have required agents to quote a flood policy for properties in Special Flood Hazard Areas.
- Specifies that it is an unfair and deceptive practice for an insurer or agent to knowingly falsely claim a flood insurance policy is certified by the OIR as complying with federal mortgage requirements when it is not.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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The Committee on Rules (Lee) recommended the following:

**Senate Amendment**

Between lines 71 and 72  
insert:

5. Require that any construction activities seaward of the coastal construction control lines established pursuant to s. 161.053 be consistent with chapter 161.

6. Encourage local governments to participate in the National Flood Insurance Program Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.

By the Committees on Community Affairs; and Banking and Insurance; and Senator Brandes

578-02720-15

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1 A bill to be entitled  
 2 An act relating to the peril of flood; amending s.  
 3 163.3178, F.S.; specifying requirements for the  
 4 coastal management element required for a local  
 5 government comprehensive plan; creating s. 472.0366,  
 6 F.S.; defining terms; requiring a surveyor and mapper  
 7 to complete an elevation certificate in accordance  
 8 with a checklist developed by the Division of  
 9 Emergency Management and to submit a copy of the  
 10 elevation certificate to the division within a certain  
 11 time after its completion; authorizing the redaction  
 12 of certain personal information from the copy;  
 13 amending s. 627.715, F.S.; authorizing flexible flood  
 14 insurance; specifying coverage requirements; deleting  
 15 a provision that prohibits supplemental flood  
 16 insurance from including excess coverage over any  
 17 other insurance covering the peril of flood; revising  
 18 the information that must be prominently noted on a  
 19 certain page of a flood insurance policy; requiring  
 20 the Office of Insurance Regulation to require an  
 21 insurer to provide appropriate credit to affected  
 22 insureds if the office determines that a rate of the  
 23 insurer is excessive or unfairly discriminatory;  
 24 revising the notice that must be provided to and  
 25 acknowledged by an applicant for flood coverage from  
 26 an authorized or surplus lines insurer if the  
 27 applicant's property is receiving flood insurance  
 28 under the National Flood Insurance Program; allowing  
 29 an authorized insurer to request a certification from

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

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30 the office which indicates that a policy, contract, or  
 31 endorsement issued by the insurer provides coverage  
 32 for the peril of flood which equals or exceeds the  
 33 flood coverage offered by the National Flood Insurance  
 34 Program; specifying requirements for such  
 35 certification; authorizing such insurer or its agent  
 36 to reference or include the certification in specified  
 37 advertising, communications, and documentation;  
 38 providing that misrepresenting that a flood policy,  
 39 contract, or endorsement is certified is an unfair or  
 40 deceptive act; providing an effective date.

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

43  
 44 Section 1. Paragraph (f) of subsection (2) of section  
 45 163.3178, Florida Statutes, is amended to read:

46 163.3178 Coastal management.—

47 (2) Each coastal management element required by s.  
 48 163.3177(6)(g) shall be based on studies, surveys, and data; be  
 49 consistent with coastal resource plans prepared and adopted  
 50 pursuant to general or special law; and contain:

51 (f) A redevelopment component ~~that which~~ outlines the  
 52 principles ~~that must which shall~~ be used to eliminate  
 53 inappropriate and unsafe development in the coastal areas when  
 54 opportunities arise. The component must:

55 1. Include development and redevelopment principles,  
 56 strategies, and engineering solutions that reduce the flood risk  
 57 in coastal areas which results from high-tide events, storm  
 58 surge, flash floods, stormwater runoff, and the related impacts

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

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59 of sea-level rise.

60 2. Encourage the use of best practices development and  
 61 redevelopment principles, strategies, and engineering solutions  
 62 that will result in the removal of coastal real property from  
 63 flood zone designations established by the Federal Emergency  
 64 Management Agency.

65 3. Identify site development techniques and best practices  
 66 that may reduce losses due to flooding and claims made under  
 67 flood insurance policies issued in this state.

68 4. Be consistent with, or more stringent than, the flood-  
 69 resistant construction requirements in the Florida Building Code  
 70 and applicable flood plain management regulations set forth in  
 71 44 C.F.R. part 60.

72 Section 2. Section 472.0366, Florida Statutes, is created  
 73 to read:

74 472.0366 Elevation certificates; requirements for surveyors  
 75 and mappers.—

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

77 (a) "Division" means the Division of Emergency Management  
 78 established within the Executive Office of the Governor under s.  
 79 14.2016.

80 (b) "Elevation certificate" means the certificate used to  
 81 demonstrate the elevation of property which has been developed  
 82 by the Federal Emergency Management Agency pursuant to federal  
 83 floodplain management regulation and which is completed by a  
 84 surveyor and mapper.

85 (2) An elevation certificate must be completed by a  
 86 surveyor and mapper in accordance with the checklist developed  
 87 by the division. Within 30 days after the completion of an

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88 elevation certificate, a surveyor and mapper must submit a copy  
 89 of the certificate to the division. The copy must be unaltered,  
 90 except that the surveyor and mapper may redact the name of the  
 91 property owner.

92 Section 3. Section 627.715, Florida Statutes, is amended to  
 93 read:

94 627.715 Flood insurance.—An authorized insurer may issue an  
 95 insurance policy, contract, or endorsement providing personal  
 96 lines residential coverage for the peril of flood on any  
 97 structure or the contents of personal property contained  
 98 therein, subject to this section. This section does not apply to  
 99 commercial lines residential or commercial lines nonresidential  
 100 coverage for the peril of flood. This section also does not  
 101 apply to coverage for the peril of flood that is excess coverage  
 102 over any other insurance covering the peril of flood. An insurer  
 103 may issue flood insurance policies, contracts, or endorsements  
 104 on a standard, preferred, customized, or supplemental basis.

105 (1) (a) 1. Standard flood insurance must cover only losses  
 106 from the peril of flood, as defined in paragraph (b), equivalent  
 107 to that provided under a standard flood insurance policy under  
 108 the National Flood Insurance Program. Standard flood insurance  
 109 issued under this section must provide the same coverage,  
 110 including deductibles and adjustment of losses, as that provided  
 111 under a standard flood insurance policy under the National Flood  
 112 Insurance Program.

113 2. Preferred flood insurance must include the same coverage  
 114 as standard flood insurance but:

115 a. Include, within the definition of "flood," losses from  
 116 water intrusion originating from outside the structure that are

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117 not otherwise covered under the definition of "flood" provided  
118 in paragraph (b).

119 b. Include coverage for additional living expenses.

120 c. Require that any loss under personal property or  
121 contents coverage that is repaired or replaced be adjusted only  
122 on the basis of replacement costs up to the policy limits.

123 3. Customized flood insurance must include coverage that is  
124 broader than the coverage provided under standard flood  
125 insurance.

126 4. Flexible flood insurance must cover losses from the  
127 peril of flood, as defined in paragraph (b), and may also  
128 include coverage for losses from water intrusion originating  
129 from outside the structure which is not otherwise covered by the  
130 definition of flood. Flexible flood insurance must include one  
131 or more of the following provisions:

132 a. An agreement between the insurer and the insured that  
133 the flood coverage is in a specified amount, such as coverage  
134 that is limited to the total amount of each outstanding mortgage  
135 applicable to the covered property.

136 b. A requirement for a deductible in an amount authorized  
137 under s. 627.701, including a deductible in an amount authorized  
138 for hurricanes.

139 c. A requirement that flood loss to a dwelling be adjusted  
140 in accordance with s. 627.7011(3) or adjusted only on the basis  
141 of the actual cash value of the property.

142 d. A restriction limiting flood coverage to the principal  
143 building defined in the policy.

144 e. A provision including or excluding coverage for  
145 additional living expenses.

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146 f. A provision excluding coverage for personal property or  
147 contents as to the peril of flood.

148 ~~5.4.~~ Supplemental flood insurance may provide coverage  
149 designed to supplement a flood policy obtained from the National  
150 Flood Insurance Program or from an insurer issuing standard or  
151 preferred flood insurance pursuant to this section. Supplemental  
152 flood insurance may provide, but need not be limited to,  
153 coverage for jewelry, art, deductibles, and additional living  
154 expenses. ~~Supplemental flood insurance does not include coverage~~  
155 ~~for the peril of flood that is excess coverage over any other~~  
156 ~~insurance covering the peril of flood.~~

157 (b) "Flood" means a general and temporary condition of  
158 partial or complete inundation of two or more acres of normally  
159 dry land area or of two or more properties, at least one of  
160 which is the policyholder's property, from:

161 1. Overflow of inland or tidal waters;

162 2. Unusual and rapid accumulation or runoff of surface  
163 waters from any source;

164 3. Mudflow; or

165 4. Collapse or subsidence of land along the shore of a lake  
166 or similar body of water as a result of erosion or undermining  
167 caused by waves or currents of water exceeding anticipated  
168 cyclical levels that result in a flood as defined in this  
169 paragraph.

170 (2) ~~Any limitations on~~ Flood coverage deductibles and or  
171 policy limits pursuant to this section, including, but not  
172 limited to, deductibles, must be prominently noted on the policy  
173 declarations page or face page.

174 (3) (a) An insurer may establish and use flood coverage

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20151094c2

175 rates in accordance with the rate standards provided in s.  
176 627.062.

177 (b) For flood coverage rates filed with the office before  
178 October 1, 2019, the insurer may also establish and use such  
179 rates in accordance with the rates, rating schedules, or rating  
180 manuals filed by the insurer with the office which allow the  
181 insurer a reasonable rate of return on flood coverage written in  
182 this state. Flood coverage rates established pursuant to this  
183 paragraph are not subject to s. 627.062(2) (a) and (f). An  
184 insurer shall notify the office of any change to such rates  
185 within 30 days after the effective date of the change. The  
186 notice must include the name of the insurer and the average  
187 statewide percentage change in rates. Actuarial data with regard  
188 to such rates for flood coverage must be maintained by the  
189 insurer for 2 years after the effective date of such rate change  
190 and is subject to examination by the office. The office may  
191 require the insurer to incur the costs associated with an  
192 examination. Upon examination, the office, in accordance with  
193 generally accepted and reasonable actuarial techniques, shall  
194 consider the rate factors in s. 627.062(2) (b), (c), and (d), and  
195 the standards in s. 627.062(2) (e), to determine if the rate is  
196 excessive, inadequate, or unfairly discriminatory. If the office  
197 determines that a rate is excessive or unfairly discriminatory,  
198 the office shall require the insurer to provide appropriate  
199 credit to affected insureds.

200 (4) A surplus lines agent may export a contract or  
201 endorsement providing flood coverage to an eligible surplus  
202 lines insurer without making a diligent effort to seek such  
203 coverage from three or more authorized insurers under s.

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204 626.916(1) (a). This subsection expires July 1, 2017.

205 (5) In addition to any other applicable requirements, an  
206 insurer providing flood coverage in this state must:

207 (a) Notify the office at least 30 days before writing flood  
208 insurance in this state; and

209 (b) File a plan of operation and financial projections or  
210 revisions to such plan, as applicable, with the office.

211 (6) Citizens Property Insurance Corporation may not provide  
212 insurance for the peril of flood.

213 (7) The Florida Hurricane Catastrophe Fund may not provide  
214 reimbursement for losses proximately caused by the peril of  
215 flood, including losses that occur during a covered event as  
216 defined in s. 215.555(2) (b).

217 (8) An agent must, upon receiving ~~obtaining~~ an application  
218 for flood coverage from an authorized or surplus lines insurer  
219 for a property receiving flood insurance under the National  
220 Flood Insurance Program, ~~must~~ obtain an acknowledgment signed by  
221 the applicant before placing the coverage with the authorized or  
222 surplus lines insurer. The acknowledgment must notify the  
223 applicant that, if the applicant discontinues coverage under the  
224 National Flood Insurance Program which is provided at a  
225 subsidized rate, the full risk rate for flood insurance may  
226 apply to the property if the applicant ~~such insurance is~~ later  
227 seeks to reinstate coverage ~~obtained~~ under the ~~National Flood~~  
228 ~~Insurance~~ program.

229 (9) With respect to the regulation of flood coverage  
230 written in this state by authorized insurers, this section  
231 supersedes any other provision in the Florida Insurance Code in  
232 the event of a conflict.

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233 (10) If federal law or rule requires a certification by a  
234 state insurance regulatory official as a condition of qualifying  
235 for private flood insurance or disaster assistance, the  
236 Commissioner of Insurance Regulation may provide the  
237 certification, and such certification is not subject to review  
238 under chapter 120.

239 (11) (a) An authorized insurer offering flood insurance may  
240 request the office to certify that a policy, contract, or  
241 endorsement provides coverage for the peril of flood which  
242 equals or exceeds the flood coverage offered by the National  
243 Flood Insurance Program. To be eligible for certification, such  
244 policy, contract, or endorsement must contain a provision  
245 stating that it meets the private flood insurance requirements  
246 specified in 42 U.S.C. s. 4012a(b) and may not contain any  
247 provision that is not in compliance with 42 U.S.C. s. 4012a(b).

248 (b) The authorized insurer or its agent may reference or  
249 include a certification under paragraph (a) in advertising or  
250 communications with an agent, a lending institution, an insured,  
251 or a potential insured only for a policy, contract, or  
252 endorsement that is certified under this subsection. The  
253 authorized insurer may include a statement that notifies an  
254 insured of the certification on the declarations page or other  
255 policy documentation related to flood coverage certified under  
256 this subsection.

257 (c) An insurer or agent who knowingly misrepresents that a  
258 flood policy, contract, or endorsement is certified under this  
259 subsection commits an unfair or deceptive act under s. 626.9541.

260 Section 4. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 23, 2015

---

I respectfully request that **Senate Bill #1094**, relating to **Peril of Flood**, 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", with a long horizontal line extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 22

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

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

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Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 378

INTRODUCER: Criminal Justice Committee and Senators Garcia and others

SUBJECT: Juvenile Justice

DATE: April 1, 2015

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2. <u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
3. <u>Dugger</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 378 expands juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. Civil citation is presently only available to youth who admit to committing a first-time misdemeanor.

In addition, law enforcement will be authorized to issue a simple warning to the youth, inform the youth's parents of the misdemeanor, issue a civil citation or require participation in a similar diversion program under the bill. The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

The bill is not expected to have a fiscal impact on the state and is effective October 1, 2015.

**II. Present Situation:**

Section 985.12, F.S., establishes a civil citation process that provides an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ of department) custody for youth who commit nonserious delinquent acts.<sup>1</sup> The department is required to encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs

---

<sup>1</sup> Section 985.12(1), F.S.

around the state.<sup>2</sup> It must also develop guidelines for civil citation which include intervention services based upon proven civil citation or similar diversion programs within the state.<sup>3</sup>

These programs are to be established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency. The statute provides that a law enforcement officer may issue a civil citation to a youth who admits to committing a misdemeanor without taking the youth into custody. Only first-time misdemeanants are eligible.<sup>4</sup> A law enforcement officer currently has the discretion to give a warning to the youth, inform the parents, issue a civil citation, or arrest a youth.

The law enforcement officer must send a copy of the citation to the department, sheriff, state attorney, DJJ's intake office or the community service performance monitor, parent or guardian of the youth, and the victim.<sup>5</sup> The issuance of a civil citation is not considered a referral to the department.<sup>6</sup>

A civil citation program or similar diversion program may be operated by law enforcement, the department, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality. Operations must be in consultation and agreement with the state attorney and local law enforcement agencies.<sup>7</sup>

Youth issued a civil citation may be assigned up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, substance abuse and mental health treatment services.<sup>8</sup> At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.<sup>9</sup>

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports information to DJJ regarding the youth's service hour completion and the expected completion date.<sup>10</sup> If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or if the youth commits a subsequent misdemeanor, the law enforcement officer must issue a report to DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.<sup>11</sup>

According to the department, there are currently 59 counties that have implemented civil citation programs. In contrast, Bradford, Polk, Taylor, Calhoun, Gulf, Hardee, Sarasota, and Washington

---

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

<sup>3</sup> Section 985.12(2), F.S.

<sup>4</sup> Section 985.12(1)

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

<sup>6</sup> *Id.*

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

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

<sup>9</sup> Section 985.12(6), F.S.

<sup>10</sup> Section 985.12(4), F.S.

<sup>11</sup> Section 985.12(5), F.S.

counties have not yet implemented one. However, these counties have similar diversion programs available.<sup>12</sup>

Additionally, the department states that in calendar years 2013 and 2014, there were 16,149 civil citations issued (7,634 in 2013 and 8,515 in 2014). In fiscal year 2013-14, there were 34,485 arrests of youth for misdemeanors. Of those arrests, 21,349 youth were eligible for civil citation and of those, 8,059 or 38 percent received one. The DJJ also found that the recidivism rate for youth completing civil citation during fiscal year 2012-13 was 5 percent. To calculate this rate, the department monitored the youth for 12 months to determine if there was a subsequent adjudication, adjudication withheld, or an adult conviction.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.12, F.S., to allow law enforcement that makes contact with a juvenile who admits to having committed a misdemeanor the discretion to issue a simple warning, inform the child's guardian or parents of the child's infraction, issue a civil citation or require participation in a similar diversion program. Based on the assessed needs of the juvenile, the diversion program may assess up to 50 community service hours and require participation in intervention services, such as family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. This section also allows use of the juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

**Section 2** reenacts s. 943.051, F.S., for the purpose of incorporating the amendment to s. 985.12, F.S.

**Section 3** reenacts s. 985.11, F.S., for the purpose of incorporating the amendment to s. 985.12, F.S.

The effective date of the bill is October 1, 2015.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

---

<sup>12</sup> Electronic mail from Meredith Stanfield, DJJ Legislative Director, dated February 25, 2015 (on file with the Senate Criminal Justice Committee).

<sup>13</sup> *Id.*

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

None.

**B. Private Sector Impact:**

Expanding civil citation could result in more youth having future opportunities for employment since these youth will not have the hurdle of an arrest record.

**C. Government Sector Impact:**

To the extent that youth are diverted from the more costly juvenile justice system, the greater the potential cost savings are to the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.12 of the Florida Statutes.

The bill reenacts sections 943.051 and 985.11 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 Criminal Justice on March 10, 2015:**

- Makes issuing a civil citation discretionary.
- Deletes the provision allowing law enforcement to arrest a first-time juvenile misdemeanor under exceptional circumstances.
- Provides that if an arrest is made, law enforcement must give written documentation as to why the arrest is warranted.

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senators Garcia,  
Gibson, Bullard, Smith, and Detert

591-02107-15

2015378c1

1 A bill to be entitled  
2 An act relating to juvenile justice; amending s.  
3 985.12, F.S.; authorizing a law enforcement officer to  
4 issue a warning to a juvenile who admits having  
5 committed a misdemeanor or to inform the child's  
6 parent or guardian of the child's infraction; allowing  
7 a law enforcement officer who does not exercise one of  
8 these options to issue a civil citation or require  
9 participation in a similar diversion program;  
10 requiring a law enforcement officer to provide written  
11 documentation in certain circumstances; providing that  
12 repeat misdemeanor offenders may participate in the  
13 civil citation program or a similar diversion program  
14 under certain circumstances; reenacting ss.  
15 943.051(3)(b) and 985.11(1)(b), F.S., relating to the  
16 issuance of a civil citation, and the issuance of a  
17 civil citation or similar diversion program,  
18 respectively, to incorporate the amendments made to s.  
19 985.12, F.S., in references thereto; providing an  
20 effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. Subsection (1) of section 985.12, Florida  
25 Statutes, is amended to read:

26 985.12 Civil citation.—

27 (1) There is established a juvenile civil citation process  
28 for the purpose of providing an efficient and innovative  
29 alternative to custody by the Department of Juvenile Justice for

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30 children who commit nonserious delinquent acts and to ensure  
31 swift and appropriate consequences. The department shall  
32 encourage and assist in the implementation and improvement of  
33 civil citation programs or other similar diversion programs  
34 around the state. The civil citation or similar diversion  
35 program shall be established at the local level with the  
36 concurrence of the chief judge of the circuit, state attorney,  
37 public defender, and the head of each local law enforcement  
38 agency involved. The program may be operated by an entity such  
39 as a law enforcement agency, the department, a juvenile  
40 assessment center, the county or municipality, or ~~another some~~  
41 ~~other~~ entity selected by the county or municipality. An entity  
42 operating the civil citation or similar diversion program must  
43 do so in consultation and agreement with the state attorney and  
44 local law enforcement agencies. Under such a juvenile civil  
45 citation or similar diversion program, a ~~any~~ law enforcement  
46 officer, upon making contact with a juvenile who admits having  
47 committed a misdemeanor, may choose to issue a simple warning or  
48 inform the child's guardian or parent of the child's infraction,  
49 or may issue a civil citation or require participation in a  
50 similar diversion program, and assess ~~up to not more than~~ 50  
51 community service hours, and require participation in  
52 intervention services as indicated by an assessment of the needs  
53 of the juvenile, including family counseling, urinalysis  
54 monitoring, and substance abuse and mental health treatment  
55 services. A copy of each citation issued under this section  
56 shall be provided to the department, and the department shall  
57 enter appropriate information into the juvenile offender  
58 information system. Use of the civil citation or similar

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59 diversion program is not limited to first-time misdemeanors and  
 60 may be used in a second or subsequent misdemeanor. If an arrest  
 61 is made, a law enforcement officer must provide written  
 62 documentation as to why an arrest was warranted. Only first-time  
 63 misdemeanor offenders are eligible for the civil citation or  
 64 similar diversion program. At the conclusion of a juvenile's  
 65 civil citation program or similar diversion program, the agency  
 66 operating the program shall report the outcome to the  
 67 department. The issuance of a civil citation is not considered a  
 68 referral to the department.

69 Section 2. For the purpose of incorporating the amendment  
 70 made by this act to section 985.12, Florida Statutes, in a  
 71 reference thereto, paragraph (b) of subsection (3) of section  
 72 943.051, Florida Statutes, is reenacted to read:

73 943.051 Criminal justice information; collection and  
 74 storage; fingerprinting.—

75 (3)

76 (b) A minor who is charged with or found to have committed  
 77 the following offenses shall be fingerprinted and the  
 78 fingerprints shall be submitted electronically to the  
 79 department, unless the minor is issued a civil citation pursuant  
 80 to s. 985.12:

- 81 1. Assault, as defined in s. 784.011.
- 82 2. Battery, as defined in s. 784.03.
- 83 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 84 4. Unlawful use of destructive devices or bombs, as defined  
 85 in s. 790.1615(1).
- 86 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 87 6. Assault or battery on a law enforcement officer, a

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88 firefighter, or other specified officers, as defined in s.  
 89 784.07(2) (a) and (b).  
 90 7. Open carrying of a weapon, as defined in s. 790.053.  
 91 8. Exposure of sexual organs, as defined in s. 800.03.  
 92 9. Unlawful possession of a firearm, as defined in s.  
 93 790.22(5).  
 94 10. Petit theft, as defined in s. 812.014(3).  
 95 11. Cruelty to animals, as defined in s. 828.12(1).  
 96 12. Arson, as defined in s. 806.031(1).  
 97 13. Unlawful possession or discharge of a weapon or firearm  
 98 at a school-sponsored event or on school property, as provided  
 99 in s. 790.115.

100 Section 3. For the purpose of incorporating the amendment  
 101 made by this act to section 985.12, Florida Statutes, in a  
 102 reference thereto, paragraph (b) of subsection (1) of section  
 103 985.11, Florida Statutes, is reenacted to read:

104 985.11 Fingerprinting and photographing.—

105 (1)

106 (b) Unless the child is issued a civil citation or is  
 107 participating in a similar diversion program pursuant to s.  
 108 985.12, a child who is charged with or found to have committed  
 109 one of the following offenses shall be fingerprinted, and the  
 110 fingerprints shall be submitted to the Department of Law  
 111 Enforcement as provided in s. 943.051(3)(b):

- 112 1. Assault, as defined in s. 784.011.
- 113 2. Battery, as defined in s. 784.03.
- 114 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 115 4. Unlawful use of destructive devices or bombs, as defined  
 116 in s. 790.1615(1).

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117 5. Neglect of a child, as defined in s. 827.03(1)(e).  
 118 6. Assault on a law enforcement officer, a firefighter, or  
 119 other specified officers, as defined in s. 784.07(2)(a).  
 120 7. Open carrying of a weapon, as defined in s. 790.053.  
 121 8. Exposure of sexual organs, as defined in s. 800.03.  
 122 9. Unlawful possession of a firearm, as defined in s.  
 123 790.22(5).  
 124 10. Petit theft, as defined in s. 812.014.  
 125 11. Cruelty to animals, as defined in s. 828.12(1).  
 126 12. Arson, resulting in bodily harm to a firefighter, as  
 127 defined in s. 806.031(1).  
 128 13. Unlawful possession or discharge of a weapon or firearm  
 129 at a school-sponsored event or on school property as defined in  
 130 s. 790.115.  
 131  
 132 A law enforcement agency may fingerprint and photograph a child  
 133 taken into custody upon probable cause that such child has  
 134 committed any other violation of law, as the agency deems  
 135 appropriate. Such fingerprint records and photographs shall be  
 136 retained by the law enforcement agency in a separate file, and  
 137 these records and all copies thereof must be marked "Juvenile  
 138 Confidential." These records are not available for public  
 139 disclosure and inspection under s. 119.07(1) except as provided  
 140 in ss. 943.053 and 985.04(2), but shall be available to other  
 141 law enforcement agencies, criminal justice agencies, state  
 142 attorneys, the courts, the child, the parents or legal  
 143 custodians of the child, their attorneys, and any other person  
 144 authorized by the court to have access to such records. In  
 145 addition, such records may be submitted to the Department of Law

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146 Enforcement for inclusion in the state criminal history records  
 147 and used by criminal justice agencies for criminal justice  
 148 purposes. These records may, in the discretion of the court, be  
 149 open to inspection by anyone upon a showing of cause. The  
 150 fingerprint and photograph records shall be produced in the  
 151 court whenever directed by the court. Any photograph taken  
 152 pursuant to this section may be shown by a law enforcement  
 153 officer to any victim or witness of a crime for the purpose of  
 154 identifying the person who committed such crime.  
 155 Section 4. This act shall take effect October 1, 2015.

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# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Criminal Justice, *Vice Chair*  
Military and Veterans Affairs, Space, and  
Domestic Security, *Vice Chair*  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development  
Communications, Energy, and Public Utilities  
Rules  
Joint Legislative Auditing Committee

**SENATOR AUDREY GIBSON**  
9th District

March 26, 2015

Senator David Simmons, Chair  
Committee on Rules  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

Chair Simmons,

I respectfully request that SB 378, relating to Juvenile Civil Citations, be placed on the next committee agenda.

SB 378, authorizes a law enforcement officer to issue a warning to a juvenile who admits having committed a misdemeanor or to inform the child's parent or guardian of the child's infraction or may issue a civil citation. The bill also requires an officer to write a report if an arrest is made. Finally, the bill allows for a 2<sup>nd</sup> civil citation issuance. The bill has passed unanimously in both of its previous committees.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Audrey".  
Audrey Gibson  
State Senator  
District 9

REPLY TO:

- 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
- 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

Please reply to:

District Office:  
1490 West 68 Street  
Suite # 201  
Hialeah, FL 33014  
Phone# (305) 364-3100

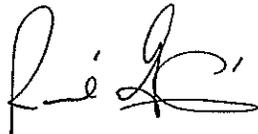
April 2, 2015

The Honorable Senator David Simmons  
Chair, Committee on Rules  
402 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Simmons:

This letter should serve as a request to have my bill SB 378: Juvenile Justice heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,



State Senator René García  
District 38  
RG:JT

CC: John Phelps, Staff Director

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/15

Meeting Date

SB 378

Bill Number (if applicable)

Topic PT Juvenile Justice (Civil Actions)

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Director of Gov. Affairs

Address 204 S. Monroe St. Suite 201

Phone 321-223-4232

Street

Tallahassee FL 32301

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing The Florida Smart Justice Alliance

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)

April 2, 2015

378

*Meeting Date*

*Bill Number (if applicable)*

Topic Juvenile Justice

*Amendment Barcode (if applicable)*

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Phone 850.488.6850

*Street*

Tallahassee

Florida

32301

Email dlaonica@comcast.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/15  
Meeting Date

378  
Bill Number (if applicable)

Topic CIVIL CITATION

Amendment Barcode (if applicable)

Name Sheriff Bob Coattieri

Job Title Pinellas County Sheriff

Address 10750 Ulmerton Rd  
Street

Phone 727-592-6206

Largo FL 34677  
City State Zip

Email Bob.Coattieri@pinellas.gov

Speaking:  For  Against  Information

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

Representing Florida Sheriff's Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/2/15  
Meeting Date

378  
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee  
City

FL  
State

32301  
Zip

Email samantha@frf.org

Speaking:  For  Against  Information

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

Representing Florida Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

4-2-15

Meeting Date

378

Bill Number (if applicable)

Topic Civil Citation / Juvenile Justice

Amendment Barcode (if applicable)

Name Marty Cassini

Job Title Leg. Counsel

Address 115 S. Andrews Ave

Phone 954-357-7575

Street

Ft Lauderdale FL 33301

City

State

Zip

Email mcassini@broward.org

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

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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)

4-2-15

Meeting Date

378

Bill Number (if applicable)

Topic JUVENILE JUSTICE

Amendment Barcode (if applicable)

Name LAURA YOUMANS LYD-MANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST  
Street

Phone 294-1838

TAL  
City

FL  
State

32301  
Zip

Email LYOUMANS@FL-COUNTIES.COM

Speaking:  For  Against  Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/15

Meeting Date

378

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address Street

Phone

City State Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Conference of Catholic Bishops

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

4/2/15  
Meeting Date

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

378  
Bill Number (if applicable)

Topic JUVENILE CIVIL CITATIONS

Amendment Barcode (if applicable)

Name AMY MERCER

Job Title EXECUTIVE DIRECTOR

Address PO BOX 14038

Phone 8502193631

TALLAHASSEE FL 32317  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA POLICE CHIEFS ASSOCIATION

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)

4-2-2015

Meeting Date

378

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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)

4/2/15  
Meeting Date

378  
Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Associate Dir. Gov. Affairs

Address One W Adams St #301

Phone 904-383-92183

Jacksonville FL 32202

Street

City

State

Zip

Email Samantha.Sexton@pacecenter.org

Speaking:  For  Against  Information

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

Representing PACE Center for Girls

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

4-2-15

Meeting Date

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

378

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street

MIAMI 33128

Email JMM2@MIAMIDAE.GOV

City

State

Zip

Speaking:  For  Against  Information

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

Representing MIAMI-DADE 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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 554

INTRODUCER: Rules Committee; Judiciary Committee; Commerce and Tourism Committee; and  
Senator Simmons

SUBJECT: Limited Liability Companies

DATE: April 2, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Siples</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 554 deletes or replaces obsolete references to the Florida Limited Liability Company Act which has been replaced by the Florida Revised Limited Liability Company Act and makes technical, grammatical, and stylistic changes due to the repeal of the earlier act.

The bill also makes the following changes to the Revised Limited Liability Company Act:

- Provides that a third-party does not have notice of a person's lack of authority to transfer real property on behalf of the LLC unless the limitation of authority is recorded in the official records of the county where the property is located;
- Authorizes an LLC to alter or eliminate a fiduciary duty in its operating agreement if it is not manifestly unreasonable and is not prohibited by law;
- Provides that the duties of a member of an LLC may be restricted, expanded, or eliminated by the operating agreement and in accordance with law;
- Provides that common law principles relating to the fiduciary duties of loyalty and care apply unless abrogated by ch. 605, F.S.
- Conditions the authority of the members of an LLC to vote outside of a meeting on having a certain minimum number of votes and recording those votes;
- Requires a member-managed LLC to identify within 10 days after a member's request for information about the LLC, the information that the LLC will provide or reasons why the LLC will not provide the information;

- Clarifies that, in the event of a conflict between an operating agreement and the LLC's articles of organization, the provisions of the operating agreement prevail over inconsistent provisions of the LLC's articles of organization;
- Repeals a provision that prohibits an LLC's operating agreement from varying the power of a person to dissociate from the LLC; and
- Limits the circumstances under which an appraisal event that is an interested transaction may be contested or set aside.

## II. Present Situation:

### Current Law

The Legislature enacted the Florida Revised Limited Liability Act<sup>1</sup> in 2013 to replace its predecessor, the Florida Limited Liability Company Act. The original act is contained in ch. 608, F.S., and the new act is contained in ch. 605, F.S. Both chapters govern the formation and operation of limited liability companies in the state.

The revised act became effective January 1, 2014, and applied to all Florida limited liability companies formed on or after that date, with a one year transition period for limited liability companies that existed before January 1, 2014. Foreign limited liability companies that were formed outside of the state, but which qualified to do business in the state, became subject to the revised act on January 1, 2014. On January 1, 2015, the one year transition period for Florida limited liability companies ended and the revised act now governs all limited liability companies in the state. The previous limited liability act contained in ch. 608, F.S., was repealed at that same time.<sup>2</sup>

A limited liability company (LLC) is a type of hybrid business entity that draws from the structure of a corporation and a partnership. It provides its members with limited liability against the entity's debts and obligations, as a corporation does. It also provides its members with the flexibility to choose the federal income tax classification of the entity. For multi-member limited liability companies, the members may choose federal income tax classification as a partnership, S corporation, or C corporation. For single-member limited liability companies, the member may choose federal income tax classification as an S corporation, C corporation, or disregarded entity.<sup>3</sup>

In order to lawfully transact business as a limited liability company in Florida, a company must sign and file its articles of organization<sup>4</sup> with the Florida Department of State and pay the

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<sup>1</sup> Chapter 2013-180, s. 2, Laws of Fla. This act is based upon the Uniform Law Commission's Revised Uniform Limited Liability Company Act of 2006, as amended through 2013.

<sup>2</sup> The Florida Bar Business Law Section Drafting Committee, *White paper for SB 554 and HB 531, An Act Relating to Limited Liability Companies* (February 9, 2015)(on file with the Senate Committee on Commerce and Tourism).

<sup>3</sup> Telephone interview and e-mail correspondence with A. Edward McGinty, Attorney, March 13, 2015 (E-mail on file with the Senate Committee on Judiciary).

<sup>4</sup> Section 605.0201, F.S.

appropriate fee.<sup>5</sup> A company must file an annual report with the Department of State to maintain its ability to transact business in this state.<sup>6</sup>

Because ch. 608, F.S., the original Florida Limited Liability Company Act, was repealed on January 1, 2015, the statutes need to be updated to reflect those changes.

### III. Effect of Proposed Changes:

The bill makes the following changes to ch. 605, F.S.:

#### **Knowledge and Notice Provision (Section 1)**

Section 605.0103(4), F.S., generally provides that a person who is not a member of a limited liability company is deemed to have notice of the company's grant or limitation of authority to a person to act on its behalf if that grant or limitation is contained in its articles of organization.

The bill amends s. 605.0103(4)5, F.S., to provide that a provision in the articles of organization limiting the authority of a person to transfer real property held in the name of the LLC is *not* effective notice of the limitation to a nonmember unless the limitation appears in an affidavit, certificate, or other instrument bearing the name of the LLC and recorded in the "office for recording transfers of real property." Statutes outside of ch. 605, F.S., provide that property and related records are maintained by the clerk of circuit court in the official records of the county where the property is located.<sup>7</sup>

#### **Operating Agreement (Sections 2 and 3)**

Section 605.0105(3), F.S., provides a lengthy list of what an operating agreement of an LLC may not do. The bill amends this section to provide that an operating agreement may not vary the power of a person to dissociate.

The bill amends s. 605.0105(4), F.S., to allow an LLC to alter or eliminate any fiduciary duty except conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law.

The bill amends s. 605.0111, F.S., to provide that an operating agreement may restrict, expand, or eliminate the duties of a member, manager, or other person who has duties to an LLC or to another member, manager, or other person that is a party to the operating agreement. This restriction, expansion, or elimination must be in accordance with s. 605.0105, F.S., which provides limitations and allowances for the contents of an operating agreement.

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<sup>5</sup> For a list of fees associated with the formation and maintenance of an LLC in this state, *see* <http://www.sunbiz.org/feellc.html> (last visited February 25, 2015).

<sup>6</sup> Section 605.0212, F.S. The annual report must include the name of the LLC, the street address of the LLC, the date of organization, the federal employer identification number, the name and address of the person having authority to manage the LLC, and any information required by the Department of State. The annual report is due by May 1 of each year.

<sup>7</sup> Section 28.222, F.S.

**Supplemental Principles of Law (Section 3)**

The bill provides that the common law principles relating to the fiduciary duties of loyalty and care supplement ch. 605, F.S., unless displaced by its provisions.

**Voting Rights of Members and Managers (Section 4)**

Section 605.04073(4), F.S., provides that any action requiring the vote or consent of the members may be taken without a meeting. The bill amends this section to provide that a vote or consent of members may be taken without a meeting if the action is approved by the members with at least the minimum number of votes necessary to authorize the action at a meeting of the members. Additionally, a record of the meeting must be made.

**Duty of Loyalty (Sections 5 and 23)**

The bill amends s. 605.04091, F.S., to clarify that the duty of loyalty includes, *but is not limited to*, the duties outlined in law.

The bill also provides that in order for the exception to a member or manager's duty of loyalty to apply in cases of conflict of interest transactions, the conflict of interest transaction provisions in s. 605.04092, F.S., must be satisfied.

**Member Demand for Records (Section 6)**

Section. 605.0410, F.S., provides the circumstances under which a member managed LLC must provide records and information to its members. The bill amends this section to require that a member managed LLC provide a member, within 10 days after receiving a demand, a record of the information, and when and where the company will provide the information. If the LLC is not providing the requested information, it must state the reasons why.

**Reinstatement (Sections 7 and 8)**

Sections 605.0715 and 605.0909, F.S., specify what information must be included in a reinstatement application. As permitted previously in ch. 608, F.S., domestic and foreign LLCs may submit a current annual report form in lieu of a reinstatement application.

**Other Remedies (Section 9)**

This bill amends s. 605.1072(2), F.S., to delete a provision that provides an exception to the limitations of remedies that an LLC may pursue regarding the legality of an appraisal event involving an interested transaction. This repeal makes the limitation of remedies in appraisal events comparable to the limitations for other business entities.<sup>8</sup>

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<sup>8</sup> See s. 607.1302(3), F.S.

### **Application of the Revised LLC Act to LLCs Formed Under the Previous LLC Act (Section 10)**

Section 605.1108, F.S., established the 1-year transition period of the Revised LLC Act and permitted LLCs formed before January 1, 2014, under the previous act, to operate under the previous act until January 1, 2015, when all Florida LLCs became subject to the Revised LLC Act. For member-managed LLCs formed under the previous act, s. 605.1108, (3)(b), F.S., states that “the language in the company’s articles of organization designating the company’s management structure operates as if that language were in the operating agreement.” Some situations exist in which a company’s articles of organization may differ from its operating agreement as to how the company’s management structure is established, leading to confusion over which language controls. In an effort to remedy this problem, s. 605.1108(3)(b), F.S., is deleted. Thus, the bill clarifies that the provisions of an operating agreement prevail over inconsistent provisions of an LLC’s articles of organization.

### **Repeal of Chapter 608, F.S., the Florida Limited Liability Act (Section 11 and others)**

As discussed in the “Present Situation” section of this analysis, the Florida Limited Liability Company Act was repealed by ch. 2013-180, Laws of Fla., effective January 1, 2015, and replaced by the Florida Revised Limited Liability Company Act.<sup>9</sup> It is the duty of the Office of Legislative Services in its operation of a statutory revision program to omit from the statutes all sections of the statutes that are expressly repealed by “any *current session* of the Legislature.”<sup>10</sup> Because the act was not repealed by a current session of the Legislature, it may be omitted from the 2015 Florida Statutes only by a bill enacted by a current Legislature. Therefore, this bill repeals ch. 608, F.S., the Florida Limited Liability Company Act.

To correctly reflect the repeal of ch. 608 from the Florida Statutes, obsolete references to ch. 608, F.S., are deleted and replaced with current references to ch. 605, F.S. If it is necessary to retain a reference to ch. 608, F.S., the bill adds the word “former” before the reference to ch. 608, F.S. This bill also makes technical, stylistic, and conforming changes necessitated by the repeal of ch. 608, F.S.

### **“Majority-in-interest” Definition (Section 20)**

This bill amends s. 605.0102, F.S., to revise the definition of “majority-in-interest” to provide that the determination of what constitutes an action taken by a “majority-in-interest” is based upon the percentage interest in the LLC’s profits owned by all of the members and not by those who have the right to vote.

### **Additional Provisions**

This bill amend ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074, 605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S., respectively, to revise cross-references and make

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<sup>9</sup> Chapter 2013-180, s. 5, Laws of Fla. Section 5 provides “Effective January 1, 2015, the Florida Limited Liability Company Act, consisting of ss. 608.401-608.705, Florida Statutes, is repealed.”

<sup>10</sup> Section 11.242(5)(b), F.S.

technical changes associated with the repeal of the Florida Limited Liability Company Act on January 1, 2015.

**Effective Date**

This act is effective July 1, 2015, unless otherwise expressly provided. To correct technical errors associated with the 2013 enactment of the Revised LLC Act and the January 1, 2015, repeal of the prior LLC Act, the bill provides a retroactive effective date of January 1, 2015, for those provisions related to the repeal of the Florida LLC Act. The remaining substantive provisions of the bill have an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, it does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides a retroactive effective date of January 1, 2015, for those provisions related to the repeal of the Florida Limited Liability Company Act. Retroactive application of a statute is

generally unconstitutional if the statute impairs vested rights, creates new obligations, or imposes new penalties.<sup>11</sup>

To determine whether a statute should be retroactively applied, courts apply two interrelated inquiries. First, courts determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If so, then courts determine whether retroactive application is constitutionally permissible.<sup>12</sup> The first prong of the test appears to clearly be met by those sections of the bill that contain an explicit statement of retroactivity.

The second prong looks to see if a vested right is impaired. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law.<sup>13</sup> It must be an immediate, fixed right of present or future enjoyment.<sup>14</sup> “Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes.”<sup>15</sup>

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0103, 605.0105, 605.0111, 605.04073, 605.0410, 605.0712, 605.0715, 605.0717, 605.0805, 605.0909, 605.1072, 605.1108, 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0102, 605.0401, 605.04074, 605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395.

The bill repeals chapter 608, Florida Statutes.

## IX. Additional Information:

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

### **CS/CS/CS by Rules on April 2, 2015:**

The committee substitute:

- Provides that if it is not manifestly unreasonable and in compliance with this section, an operating agreement may alter or eliminate a fiduciary duty;
- Provides that an operating agreement may restrict, expand, or eliminate the duties of a member, manager, or other person to an LLC or to another member, manager, or other person that is bound by the operating agreement;
- Provides that common law principles relating to the fiduciary duties of loyalty and care supplement ch. 605, F.S., to the extent that such common law principles are not abrogated by its provisions;

<sup>11</sup> *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210, 1216 (Fla. 2nd DCA 2004).

<sup>12</sup> *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999).

<sup>13</sup> *R.A.M.* at 1218.

<sup>14</sup> *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

<sup>15</sup> *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

- Clarifies that the duty of loyalty includes, *but is not limited to*, the duties outlined in law; and
- Makes grammatical and stylistic changes.

**CS/CS by Judiciary on March 24, 2015:**

The CS/CS:

- Specifies what information must be included in a reinstatement application by an LLC; and
- Permits domestic and foreign LLCs to submit an annual report, in lieu of a reinstatement application, when seeking reinstatement with the department.

**CS by Commerce and Tourism on March 2, 2015:**

The committee substitute:

- Repeals a provision that provides an exception to the limitation of the remedies in appraisal events if the appraisal event is an interested transaction.
- Repeals ch. 608, F.S., the Limited Liability Company Act.
- Makes retroactive the effective date to January 1, 2015, those provisions that correct technical errors and cross-references associated with the repeal of the Florida Limited Liability Company Act and enactment of the Florida Revised Limited Liability Company Act in 2013.
- Adds additional cross-references that needed to be updated.

**B. Amendments:**

None.



664452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

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The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 92 - 114

and insert:

Section 2. Paragraphs (i) and (q) of subsection (3) and paragraph (c) of subsection (4) of section 605.0105, Florida Statutes, are amended to read:

605.0105 Operating agreement; scope, function, and limitations.—

(3) An operating agreement may not do any of the following:

~~(i) Vary the power of a person to dissociate under s.~~



664452

12 ~~605.0601, except to require that the notice under s. 605.0602(1)~~  
13 ~~be in a record.~~

14 (p) ~~(q)~~ Provide for indemnification for a member or manager  
15 under s. 605.0408 for any of the following:

16 1. Conduct involving bad faith, willful or intentional  
17 misconduct, or a knowing violation of law.

18 2. A transaction from which the member or manager derived  
19 an improper personal benefit.

20 3. A circumstance under which the liability provisions of  
21 s. 605.0406 are applicable.

22 4. A breach of duties or obligations under s. 605.04091,  
23 taking into account a restriction, an expansion, or an  
24 elimination ~~variation~~ of such duties and obligations provided  
25 for in the operating agreement to the extent allowed by  
26 subsection (4).

27 (4) Subject to paragraph (3)(g), without limiting other  
28 terms that may be included in an operating agreement, the  
29 following rules apply:

30 (c) If not manifestly unreasonable, the operating agreement  
31 may:

32 1. Alter or eliminate the aspects of the duty of loyalty  
33 under s. 605.04091(2);

34 2. Identify specific types or categories of activities that  
35 do not violate the duty of loyalty; ~~and~~

36 3. Alter the duty of care, but may not authorize willful or  
37 intentional misconduct or a knowing violation of law; and

38 4. Alter or eliminate any other fiduciary duty.

39 Section 3. Section 605.0111, Florida Statutes, is amended  
40 to read:



664452

41           605.0111 Rules of construction and supplemental principles  
42 of law.—

43           (1) It is the intent of this chapter to give the maximum  
44 effect to the principle of freedom of contract and to the  
45 enforceability of operating agreements, including the purposes  
46 of ss. 605.0105-605.0107.

47           (2) To the extent that, at law or in equity, a member, a  
48 manager, or another person has duties, including fiduciary  
49 duties, to a limited liability company or to another member or  
50 manager or to another person that is a party to or is otherwise  
51 bound by an operating agreement, the duties of the member,  
52 manager, or other person may be restricted, expanded, or  
53 eliminated, including in the determination of applicable duties  
54 and obligations under this chapter, by the operating agreement,  
55 and to the extent allowed by s. 605.0105.

56           (3) Unless displaced by particular provisions of this  
57 chapter, the principles of law and equity, including the common  
58 law principles relating to the fiduciary duties of loyalty and  
59 care, supplement this chapter.

60           Section 4. Subsection (4) of section 605.04073, Florida  
61 Statutes, is amended to read:

62           605.04073 Voting rights of members and managers.—

63           (4) An action requiring the vote or consent of members  
64 under this chapter may be taken without a meeting if the action  
65 is approved in a record by members with at least the minimum  
66 number of votes that would be necessary to authorize or take the  
67 action at a meeting of the members.,~~and~~ A member may appoint a  
68 proxy or other agent to vote or consent for the member by  
69 signing an appointing record, personally or by the member's



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70 agent. On an action taken by fewer than all of the members  
71 without a meeting, notice of the action must be given to those  
72 members who did not consent in writing to the action or who were  
73 not entitled to vote on the action within 10 days after the  
74 action was taken.

75 Section 5. Subsections (2) and (3) of section 605.04091,  
76 Florida Statutes, are amended to read:

77 605.04091 Standards of conduct for members and managers.—

78 (2) The duty of loyalty includes ~~is limited to~~:

79 (a) Accounting to the limited liability company and holding  
80 as trustee for it any property, profit, or benefit derived by  
81 the manager or member, as applicable:

82 1. In the conduct or winding up of the company's activities  
83 and affairs;

84 2. From the use by the member or manager of the company's  
85 property; or

86 3. From the appropriation of a company opportunity;

87 (b) Refraining from dealing with the company in the conduct  
88 or winding up of the company's activities and affairs as, or on  
89 behalf of, a person having an interest adverse to the company,  
90 except to the extent that a transaction satisfies the  
91 requirements of this section; and

92 (c) Refraining from competing with the company in the  
93 conduct of the company's activities and affairs before the  
94 dissolution of the company.

95 (3) The duty of care in the conduct or winding up of the  
96 company's activities and affairs is ~~limited~~ to refrain  
97 ~~refraining~~ from engaging in grossly negligent or reckless  
98 conduct, willful or intentional misconduct, or a knowing



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99 violation of law.

100

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

102 And the title is amended as follows:

103 Delete lines 13 - 16

104 and insert:

105 dissociate; clarifying that an operating agreement is  
106 prohibited from providing indemnification for a member  
107 or manager in certain circumstances; authorizing an  
108 operating agreement to alter or eliminate any other  
109 fiduciary duty; amending s. 605.0111, F.S.; providing  
110 that the duties of the member, manager, or another  
111 person may be restricted, expanded, or eliminated in  
112 certain circumstances; amending s. 605.04073, F.S.;  
113 requiring certain conditions for members of a limited  
114 liability company, without a meeting, to take certain  
115 actions requiring the vote or consent of the members;  
116 amending s. 605.04091, F.S.; providing that the duty  
117 of loyalty includes, but is not limited to, specified  
118 actions; revising the duty of care in the conduct or  
119 winding up of the company's activities and affairs;  
120 amending

By the Committees on Judiciary; and Commerce and Tourism; and  
Senator Simmons

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1 A bill to be entitled  
2 An act relating to limited liability companies;  
3 amending s. 605.0103, F.S.; specifying that persons  
4 who are not members of a limited liability company are  
5 not deemed to have notice of a provision of the  
6 company's articles of organization which limits a  
7 person's authority to transfer real property held in  
8 the company's name unless such limitation appears in  
9 an affidavit, certificate, or other instrument that is  
10 recorded in a specified manner; amending s. 605.0105,  
11 F.S.; removing the prohibition that an operating  
12 agreement may not vary the power of a person to  
13 dissociate; amending s. 605.04073, F.S.; requiring  
14 certain conditions for members of a limited liability  
15 company, without a meeting, to take certain actions  
16 requiring the vote or consent of the members; amending  
17 s. 605.0410, F.S.; requiring a limited liability  
18 company to provide a record of certain information  
19 within a specified period to a member who makes a  
20 demand; amending s. 605.0715, F.S.; revising which  
21 materials and information a specified limited  
22 liability company must submit to the Department of  
23 State as part of an application for reinstatement  
24 after administrative dissolution; amending s.  
25 605.0909, F.S.; revising which materials and  
26 information a specified limited liability company must  
27 submit to the Department of State as part of an  
28 application for reinstatement after revocation of  
29 certificate of authority; amending s. 605.1072, F.S.;

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30 deleting a provision providing an exception to the  
31 limitation of remedies for appraisal events under  
32 specified circumstances; amending s. 605.1108, F.S.;  
33 deleting a provision requiring that, for a limited  
34 liability company formed before a specified date,  
35 certain language in the company's articles of  
36 organization operates as if it were in the operating  
37 agreement; repealing chapter 608, F.S., relating to  
38 the Florida Limited Liability Company Act; amending  
39 ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13,  
40 310.181, 440.02, 605.0401, 605.04074, 605.04091,  
41 606.06, 607.1108, 607.1109, 607.11101, 621.12,  
42 636.204, 655.0201, 658.2953, 694.16, and 1002.395,  
43 F.S.; conforming provisions to the repeal of the  
44 Florida Limited Liability Company Act; providing  
45 retroactive applicability; amending ss. 605.0102,  
46 605.0712, 605.0717, and 605.0805, F.S.; revising a  
47 definition; conforming cross-references; providing  
48 effective dates.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Paragraph (b) of subsection (4) of section  
53 605.0103, Florida Statutes, is amended to read:  
54 605.0103 Knowledge; notice.—  
55 (4) A person who is not a member is deemed to:  
56 (b) Have notice of a limited liability company's:  
57 1. Dissolution, 90 days after the articles of dissolution  
58 filed under s. 605.0707 become effective;

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59 2. Termination, 90 days after a statement of termination  
60 filed under s. 605.0709(7) becomes effective;

61 3. Participation in a merger, interest exchange,  
62 conversion, or domestication, 90 days after the articles of  
63 merger, articles of interest exchange, articles of conversion,  
64 or articles of domestication under s. 605.1025, s. 605.1035, s.  
65 605.1045, or s. 605.1055, respectively, become effective;

66 4. Declaration in its articles of organization that it is  
67 manager-managed in accordance with s. 605.0201(3) (a); however,  
68 if such a declaration has been added or changed by an amendment  
69 or amendment and restatement of the articles of organization,  
70 notice of the addition or change may not become effective until  
71 90 days after the effective date of such amendment or amendment  
72 and restatement; and

73 5. Grant of authority to or limitation imposed on the  
74 authority of a person holding a position or having a specified  
75 status in a company, or grant of authority to or limitation  
76 imposed on the authority of a specific person, if the grant of  
77 authority or limitation imposed on the authority is described in  
78 the articles of organization in accordance with s.  
79 605.0201(3) (d); however, if that description has been added or  
80 changed by an amendment or an amendment and restatement of the  
81 articles of organization, notice of the addition or change may  
82 not become effective until 90 days after the effective date of  
83 such amendment or amendment and restatement. A provision of the  
84 articles of organization that limits the authority of a person  
85 to transfer real property held in the name of the limited  
86 liability company is not notice of such limitation to a person  
87 who is not a member or manager of the company, unless such

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88 limitation appears in an affidavit, certificate, or other  
89 instrument that bears the name of the limited liability company  
90 and is recorded in the office for recording transfers of such  
91 real property.

92 Section 2. Paragraph (i) of subsection (3) of section  
93 605.0105, Florida Statutes, is amended to read:

94 605.0105 Operating agreement; scope, function, and  
95 limitations.—

96 (3) An operating agreement may not do any of the following:

97 ~~(i) Vary the power of a person to dissociate under s.~~  
98 ~~605.0601, except to require that the notice under s. 605.0602(1)~~  
99 ~~be in a record.~~

100 Section 3. Subsection (4) of section 605.04073, Florida  
101 Statutes, is amended to read:

102 605.04073 Voting rights of members and managers.—

103 (4) An action requiring the vote or consent of members  
104 under this chapter may be taken without a meeting if the action  
105 is approved in a record by members with at least the minimum  
106 number of votes that would be necessary to authorize or take the  
107 action at a meeting of the members. ~~and~~ A member may appoint a  
108 proxy or other agent to vote or consent for the member by  
109 signing an appointing record, personally or by the member's  
110 agent. On an action taken by fewer than all of the members  
111 without a meeting, notice of the action must be given to those  
112 members who did not consent in writing to the action or who were  
113 not entitled to vote on the action within 10 days after the  
114 action was taken.

115 Section 4. Subsection (2), paragraph (a) of subsection (3),  
116 and subsection (4) of section 605.0410, Florida Statutes, are

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117 amended to read:

118 605.0410 Records to be kept; rights of member, manager, and  
119 person dissociated to information.—

120 (2) In a member-managed limited liability company, the  
121 following rules apply:

122 (a) Upon reasonable notice, a member may inspect and copy  
123 during regular business hours, at a reasonable location  
124 specified by the company:

125 1. The records described in subsection (1); and  
126 2. Each other record maintained by the company regarding  
127 the company's activities, affairs, financial condition, and  
128 other circumstances, to the extent the information is material  
129 to the member's rights and duties under the operating agreement  
130 or this chapter.

131 (b) The company shall furnish to each member:

132 1. Without demand, any information concerning the company's  
133 activities, affairs, financial condition, and other  
134 circumstances that the company knows and is material to the  
135 proper exercise of the member's rights and duties under the  
136 operating agreement or this chapter, except to the extent the  
137 company can establish that it reasonably believes the member  
138 already knows the information; and

139 2. On demand, other information concerning the company's  
140 activities, affairs, financial condition, and other  
141 circumstances, except to the extent the demand or information  
142 demanded is unreasonable or otherwise improper under the  
143 circumstances.

144 (c) Within 10 days after receiving a demand pursuant to  
145 subparagraph (b)2., the company shall provide to the member who

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146 made the demand a record of:

147 1. The information that the company will provide in  
148 response to the demand and when and where the company will  
149 provide such information.

150 2. For any demanded information that the company is not  
151 providing, the reasons that the company will not provide the  
152 information.

153 (d)(e) The duty to furnish information under this  
154 subsection also applies to each member to the extent the member  
155 knows any of the information described in this subsection.

156 (3) In a manager-managed limited liability company, the  
157 following rules apply:

158 (a) The informational rights stated in subsection (2) and  
159 the duty stated in paragraph (2) (d) ~~(2)(e)~~ apply to the managers  
160 and not to the members.

161 (4) Subject to subsection (10) ~~(9)~~, on 10 days' demand made  
162 in a record received by a limited liability company, a person  
163 dissociated as a member may have access to information to which  
164 the person was entitled while a member if:

165 (a) The information pertains to the period during which the  
166 person was a member;

167 (b) The person seeks the information in good faith; and

168 (c) The person satisfies the requirements imposed on a  
169 member by paragraph (3) (b).

170 Section 5. Section 605.0715, Florida Statutes, is amended  
171 to read:

172 605.0715 Reinstatement.—

173 (1) A limited liability company that is administratively  
174 dissolved under s. 605.0714 or former s. 608.4481 may apply to

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175 the department for reinstatement at any time after the effective  
 176 date of dissolution. The company must submit a ~~form of~~  
 177 ~~application for reinstatement prescribed and furnished by the~~  
 178 ~~department and provide all of the information required by the~~  
 179 ~~department, together with~~ all fees and penalties then owed by  
 180 the company at the rates provided by law at the time the company  
 181 applies for reinstatement together with an application for  
 182 reinstatement prescribed and furnished by the department, which  
 183 is signed by both the registered agent and an authorized  
 184 representative of the company and states:

185     (a) The name of the limited liability company.  
 186     (b) The street address of the company's principal office  
 187 and mailing address.  
 188     (c) The date of the company's organization.  
 189     (d) The company's federal employer identification number  
 190 or, if none, whether one has been applied for.  
 191     (e) The name, title or capacity, and address of at least  
 192 one person who has authority to manage the company.  
 193     (f) Additional information that is necessary or appropriate  
 194 to enable the department to carry out this chapter.

195     (2) In lieu of the requirement to file an application for  
 196 reinstatement as described in subsection (1), an  
 197 administratively dissolved limited liability company may submit  
 198 all fees and penalties owed by the company at the rates provided  
 199 by law at the time the company applies for reinstatement,  
 200 together with a current annual report, signed by both the  
 201 registered agent and an authorized representative of the  
 202 company, which contains the information described in subsection  
 203 (1).

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204     ~~(3)(2)~~ If the department determines that an application for  
 205 reinstatement contains the information required under subsection  
 206 (1) or subsection (2) and that the information is correct, upon  
 207 payment of all required fees and penalties, the department shall  
 208 reinstate the limited liability company.

209     ~~(4)(3)~~ When reinstatement under this section becomes  
 210 effective:

211     (a) The reinstatement relates back to and takes effect as  
 212 of the effective date of the administrative dissolution.

213     (b) The limited liability company may resume its activities  
 214 and affairs as if the administrative dissolution had not  
 215 occurred.

216     (c) The rights of a person arising out of an act or  
 217 omission in reliance on the dissolution before the person knew  
 218 or had notice of the reinstatement are not affected.

219     ~~(5)(4)~~ The name of the dissolved limited liability company  
 220 is not available for assumption or use by another business  
 221 entity until 1 year after the effective date of dissolution  
 222 unless the dissolved limited liability company provides the  
 223 department with a record executed as required pursuant to s.  
 224 605.0203 permitting the immediate assumption or use of the name  
 225 by another limited liability company.

226     Section 6. Section 605.0909, Florida Statutes, is amended  
 227 to read:

228     605.0909 Reinstatement following revocation of certificate  
 229 of authority.—

230     (1) A foreign limited liability company whose certificate  
 231 of authority has been revoked may apply to the department for  
 232 reinstatement at any time after the effective date of the

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233 revocation. The foreign limited liability company applying for  
 234 reinstatement must ~~submit provide information in a form~~  
 235 ~~prescribed and furnished by the department and pay all fees and~~  
 236 ~~penalties then owed by the foreign limited liability company at~~  
 237 ~~rates provided by law at the time the foreign limited liability~~  
 238 ~~company applies for reinstatement together with an application~~  
 239 ~~for reinstatement prescribed and furnished by the department,~~  
 240 ~~which is signed by both the registered agent and an authorized~~  
 241 ~~representative of the company and states:~~

242 (a) The name under which the foreign limited liability  
 243 company is registered to transact business in this state.

244 (b) The street address of the company's principal office  
 245 and its mailing address.

246 (c) The jurisdiction of the company's formation and the  
 247 date on which it became qualified to transact business in this  
 248 state.

249 (d) The company's federal employer identification number  
 250 or, if none, whether one has been applied for.

251 (e) The name, title or capacity, and address of at least  
 252 one person who has authority to manage the company.

253 (f) Additional information that is necessary or appropriate  
 254 to enable the department to carry out this chapter.

255 (2) In lieu of the requirement to file an application for  
 256 reinstatement as described in subsection (1), a foreign limited  
 257 liability company whose certificate of authority has been  
 258 revoked may submit all fees and penalties owed by the company at  
 259 the rates provided by law at the time the company applies for  
 260 reinstatement, together with a current annual report, signed by  
 261 both the registered agent and an authorized representative of

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262 the company, which contains the information described in  
 263 subsection (1).

264 ~~(3)-(2)~~ If the department determines that an application for  
 265 reinstatement contains the information required under subsection  
 266 (1) or subsection (2) and that the information is correct, upon  
 267 payment of all required fees and penalties, the department shall  
 268 reinstate the foreign limited liability company's certificate of  
 269 authority.

270 ~~(4)-(3)~~ When a reinstatement becomes effective, it relates  
 271 back to and takes effect as of the effective date of the  
 272 revocation of authority and the foreign limited liability  
 273 company may resume its activities in this state as if the  
 274 revocation of authority had not occurred.

275 ~~(5)-(4)~~ The name of the foreign limited liability company  
 276 whose certificate of authority has been revoked is not available  
 277 for assumption or use by another business entity until 1 year  
 278 after the effective date of revocation of authority unless the  
 279 limited liability company provides the department with a record  
 280 executed pursuant to s. 605.0203 which authorizes the immediate  
 281 assumption or use of its name by another limited liability  
 282 company.

283 ~~(6)-(5)~~ If the name of the foreign limited liability company  
 284 applying for reinstatement has been lawfully assumed in this  
 285 state by another business entity, the department shall require  
 286 the foreign limited liability company to comply with s. 605.0906  
 287 before accepting its application for reinstatement.

288 Section 7. Paragraph (c) of subsection (2) of section  
 289 605.1072, Florida Statutes, is amended to read:

290 605.1072 Other remedies limited.-

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291 (2) Subsection (1) does not apply to an appraisal event  
292 that:

293 ~~(c) Is an interested transaction, unless it has been~~  
294 ~~approved in the same manner as is provided in s. 605.04092 or is~~  
295 ~~fair to the limited liability company as defined in s.~~  
296 ~~605.04092(1)(c).~~

297 Section 8. Subsection (3) of section 605.1108, Florida  
298 Statutes, is amended to read:

299 605.1108 Application to limited liability company formed  
300 under the Florida Limited Liability Company Act.—

301 (3) For the purpose of applying this chapter to a limited  
302 liability company formed before January 1, 2014, under the  
303 Florida Limited Liability Company Act, former ss. 608.401-  
304 608.705,+

305 ~~(a)~~ the company's articles of organization are deemed to be  
306 the company's articles of organization under this chapter; ~~and~~

307 ~~(b) For the purpose of applying s. 605.0102(39), the~~  
308 ~~language in the company's articles of organization designating~~  
309 ~~the company's management structure operates as if that language~~  
310 ~~were in the operating agreement.~~

311 Section 9. Effective upon this act becoming a law, chapter  
312 608, Florida Statutes, consisting of sections 608.401, 608.402,  
313 608.403, 608.404, 608.405, 608.406, 608.407, 608.408, 608.4081,  
314 608.4082, 608.409, 608.4101, 608.411, 608.4115, 608.415,  
315 608.416, 608.4211, 608.422, 608.4225, 608.4226, 608.4227,  
316 608.4228, 608.4229, 608.423, 608.4231, 608.4232, 608.4235,  
317 608.4236, 608.4237, 608.4238, 608.425, 608.426, 608.4261,  
318 608.427, 608.428, 608.431, 608.432, 608.433, 608.434, 608.4351,  
319 608.4352, 608.4353, 608.4354, 608.4355, 608.4356, 608.4357,

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320 608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.438,  
321 608.4381, 608.4382, 608.4383, 608.439, 608.4401, 608.4402,  
322 608.4403, 608.4404, 608.441, 608.4411, 608.4421, 608.4431,  
323 608.444, 608.445, 608.446, 608.447, 608.448, 608.4481, 608.4482,  
324 608.4483, 608.449, 608.4491, 608.4492, 608.4493, 608.4511,  
325 608.452, 608.455, 608.461, 608.462, 608.463, 608.471, 608.501,  
326 608.502, 608.503, 608.504, 608.505, 608.506, 608.507, 608.508,  
327 608.509, 608.5101, 608.511, 608.512, 608.513, 608.5135, 608.514,  
328 608.601, 608.701, 608.702, 608.703, 608.704, and 608.705, is  
329 repealed.

330 Section 10. Effective upon this act becoming a law and  
331 operating retroactively to January 1, 2015, subsection (3) of  
332 section 15.16, Florida Statutes, is amended to read:

333 15.16 Reproduction of records; admissibility in evidence;  
334 electronic receipt and transmission of records; certification;  
335 acknowledgment.—

336 (3) The Department of State may cause to be received  
337 electronically any records that are required to be filed with it  
338 pursuant to chapter 55, chapter 117, chapter 118, chapter 495,  
339 chapter 605, chapter 606, chapter 607, ~~chapter 608~~, chapter 610,  
340 chapter 617, chapter 620, chapter 621, chapter 679, chapter 713,  
341 or chapter 865, through facsimile or other electronic transfers,  
342 for the purpose of filing such records. The originals of all  
343 such electronically transmitted records must be executed in the  
344 manner provided in paragraph (5)(b). The receipt of such  
345 electronic transfer constitutes delivery to the department as  
346 required by law. The department may use electronic transmissions  
347 for purposes of notice in the administration of chapters 55,  
348 117, 118, 495, 605, 606, 607, ~~608~~, 610, 617, 620, 621, 679, and

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349 713 and s. 865.09. The Department of State may collect e-mail  
 350 addresses for purposes of notice and communication in the  
 351 performance of its duties and may require filers and registrants  
 352 to furnish such e-mail addresses when presenting documents for  
 353 filing.

354 Section 11. Effective upon this act becoming a law and  
 355 operating retroactively to January 1, 2015, subsections (1) and  
 356 (2) of section 48.062, Florida Statutes, are amended to read:

357 48.062 Service on a limited liability company.—

358 (1) Process against a limited liability company, domestic  
 359 or foreign, may be served on the registered agent designated by  
 360 the limited liability company under chapter 605 ~~or chapter 608~~.  
 361 A person attempting to serve process pursuant to this subsection  
 362 may serve the process on any employee of the registered agent  
 363 during the first attempt at service even if the registered agent  
 364 is a natural person and is temporarily absent from his or her  
 365 office.

366 (2) If service cannot be made on a registered agent of the  
 367 limited liability company because of failure to comply with  
 368 chapter 605 ~~or chapter 608~~ or because the limited liability  
 369 company does not have a registered agent, or if its registered  
 370 agent cannot with reasonable diligence be served, process  
 371 against the limited liability company, domestic or foreign, may  
 372 be served:

373 (a) On a member of a member-managed limited liability  
 374 company;

375 (b) On a manager of a manager-managed limited liability  
 376 company; or

377 (c) If a member or manager is not available during regular

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378 business hours to accept service on behalf of the limited  
 379 liability company, he, she, or it may designate an employee of  
 380 the limited liability company to accept such service. After one  
 381 attempt to serve a member, manager, or designated employee has  
 382 been made, process may be served on the person in charge of the  
 383 limited liability company during regular business hours.

384 Section 12. Effective upon this act becoming a law and  
 385 operating retroactively to January 1, 2015, paragraph (c) of  
 386 subsection (1) of section 213.758, Florida Statutes, is amended  
 387 to read:

388 213.758 Transfer of tax liabilities.—

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

390 (c) "Insider" means:

391 1. Any person included within the meaning of insider as  
 392 used in s. 726.102; or

393 2. A manager of, ~~a managing member of,~~ or a person who  
 394 controls a transferor that is a limited liability company, or a  
 395 relative as defined in s. 726.102 of any such persons.

396 Section 13. Effective upon this act becoming a law and  
 397 operating retroactively to January 1, 2015, subsection (1) of  
 398 section 220.02, Florida Statutes, is amended to read:

399 220.02 Legislative intent.—

400 (1) It is the intent of the Legislature in enacting this  
 401 code to impose a tax upon all corporations, organizations,  
 402 associations, and other artificial entities which derive from  
 403 this state or from any other jurisdiction permanent and inherent  
 404 attributes not inherent in or available to natural persons, such  
 405 as perpetual life, transferable ownership represented by shares  
 406 or certificates, and limited liability for all owners. It is

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407 intended that any limited liability company that is classified  
 408 as a partnership for federal income tax purposes and is defined  
 409 in and organized pursuant to ~~formed under~~ chapter 605 ~~608~~ or  
 410 qualified to do business in this state as a foreign limited  
 411 liability company not be subject to the tax imposed by this  
 412 code. It is the intent of the Legislature to subject such  
 413 corporations and other entities to taxation hereunder for the  
 414 privilege of conducting business, deriving income, or existing  
 415 within this state. This code is not intended to tax, and shall  
 416 not be construed so as to tax, any natural person who engages in  
 417 a trade, business, or profession in this state under his or her  
 418 own or any fictitious name, whether individually as a  
 419 proprietorship or in partnership with others, or as a member or  
 420 a manager of a limited liability company classified as a  
 421 partnership for federal income tax purposes; any estate of a  
 422 decedent or incompetent; or any testamentary trust. However, a  
 423 corporation or other taxable entity which is or which becomes  
 424 partners with one or more natural persons shall not, merely by  
 425 reason of being a partner, exclude from its net income subject  
 426 to tax its respective share of partnership net income. This  
 427 statement of intent shall be given preeminent consideration in  
 428 any construction or interpretation of this code in order to  
 429 avoid any conflict between this code and the mandate in s. 5,  
 430 Art. VII of the State Constitution that no income tax be levied  
 431 upon natural persons who are residents and citizens of this  
 432 state.

433 Section 14. Effective upon this act becoming a law and  
 434 operating retroactively to January 1, 2015, paragraph (e) of  
 435 subsection (1) of section 220.03, Florida Statutes, is amended

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436 to read:

437 220.03 Definitions.—

438 (1) SPECIFIC TERMS.—When used in this code, and when not  
 439 otherwise distinctly expressed or manifestly incompatible with  
 440 the intent thereof, the following terms shall have the following  
 441 meanings:

442 (e) "Corporation" includes all domestic corporations;  
 443 foreign corporations qualified to do business in this state or  
 444 actually doing business in this state; joint-stock companies;  
 445 limited liability companies, under chapter 605 ~~608~~; common-law  
 446 declarations of trust, under chapter 609; corporations not for  
 447 profit, under chapter 617; agricultural cooperative marketing  
 448 associations, under chapter 618; professional service  
 449 corporations, under chapter 621; foreign unincorporated  
 450 associations, under chapter 622; private school corporations,  
 451 under chapter 623; foreign corporations not for profit which are  
 452 carrying on their activities in this state; and all other  
 453 organizations, associations, legal entities, and artificial  
 454 persons which are created by or pursuant to the statutes of this  
 455 state, the United States, or any other state, territory,  
 456 possession, or jurisdiction. The term "corporation" does not  
 457 include proprietorships, even if using a fictitious name;  
 458 partnerships of any type, as such; limited liability companies  
 459 that are taxable as partnerships for federal income tax  
 460 purposes; state or public fairs or expositions, under chapter  
 461 616; estates of decedents or incompetents; testamentary trusts;  
 462 or private trusts.

463 Section 15. Effective upon this act becoming a law and  
 464 operating retroactively to January 1, 2015, paragraph (j) of

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465 subsection (2) of section 220.13, Florida Statutes, is amended  
466 to read:

467 220.13 "Adjusted federal income" defined.—

468 (2) For purposes of this section, a taxpayer's taxable  
469 income for the taxable year means taxable income as defined in  
470 s. 63 of the Internal Revenue Code and properly reportable for  
471 federal income tax purposes for the taxable year, but subject to  
472 the limitations set forth in paragraph (1) (b) with respect to  
473 the deductions provided by ss. 172 (relating to net operating  
474 losses), 170(d) (2) (relating to excess charitable  
475 contributions), 404(a) (1) (D) (relating to excess pension trust  
476 contributions), 404(a) (3) (A) and (B) (to the extent relating to  
477 excess stock bonus and profit-sharing trust contributions), and  
478 1212 (relating to capital losses) of the Internal Revenue Code,  
479 except that, subject to the same limitations, the term:

480 (j) "Taxable income," in the case of a limited liability  
481 company, other than a limited liability company classified as a  
482 partnership for federal income tax purposes, as defined in and  
483 organized pursuant to chapter 605 ~~608~~ or qualified to do  
484 business in this state as a foreign limited liability company or  
485 other than a similar limited liability company classified as a  
486 partnership for federal income tax purposes and created as an  
487 artificial entity pursuant to the statutes of the United States  
488 or any other state, territory, possession, or jurisdiction, if  
489 such limited liability company or similar entity is taxable as a  
490 corporation for federal income tax purposes, means taxable  
491 income determined as if such limited liability company were  
492 required to file or had filed a federal corporate income tax  
493 return under the Internal Revenue Code;

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494 Section 16. Effective upon this act becoming a law and  
495 operating retroactively to January 1, 2015, section 310.181,  
496 Florida Statutes, is amended to read:

497 310.181 Corporate powers.—All the rights, powers, and  
498 liabilities conferred or imposed by the laws of Florida relating  
499 to corporations for profit organized under part I of chapter 607  
500 or under former chapter 608 before January 1, 1976, or to  
501 corporations organized under chapter 621 apply to corporations  
502 organized pursuant to s. 310.171.

503 Section 17. Effective upon this act becoming a law and  
504 operating retroactively to January 1, 2015, subsection (9) of  
505 section 440.02, Florida Statutes, is amended to read:

506 440.02 Definitions.—When used in this chapter, unless the  
507 context clearly requires otherwise, the following terms shall  
508 have the following meanings:

509 (9) "Corporate officer" or "officer of a corporation" means  
510 any person who fills an office provided for in the corporate  
511 charter or articles of incorporation filed with the Division of  
512 Corporations of the Department of State or as authorized or  
513 required under part I of chapter 607. The term "officer of a  
514 corporation" includes a member owning at least 10 percent of a  
515 limited liability company as defined in and organized pursuant  
516 to created and approved under chapter 605 ~~608~~.

517 Section 18. Subsection (37) of section 605.0102, Florida  
518 Statutes, is amended to read:

519 605.0102 Definitions.—As used in this chapter, the term:

520 (37) "Majority-in-interest" means those members who hold  
521 more than 50 percent of the then-current percentage or other  
522 interest in the profits of the limited liability company owned

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523 ~~by all of its members and who have the right to vote~~; however,  
524 as used in ss. 605.1001-605.1072, the term means:

525 (a) In the case of a limited liability company with only  
526 one class or series of members, the holders of more than 50  
527 percent of the then-current percentage or other interest in the  
528 profits of the company owned by all of its members who have the  
529 right to approve ~~the~~ a merger, interest exchange, or conversion,  
530 as applicable, under the organic law or the organic rules of the  
531 company; and

532 (b) In the case of a limited liability company having more  
533 than one class or series of members, the holders in each class  
534 or series of more than 50 percent of the then-current percentage  
535 or other interest in the profits of the company owned by all of  
536 the members of that class or series who have the right to  
537 approve ~~the~~ a merger, interest exchange, or conversion, as  
538 applicable, under the organic law or the organic rules of the  
539 company, unless the company's organic rules provide for the  
540 approval of the transaction in a different manner.

541 Section 19. Effective upon this act becoming a law and  
542 operating retroactively to January 1, 2015, subsection (3) of  
543 section 605.0401, Florida Statutes, is amended to read:

544 605.0401 Becoming a member.—

545 (3) After formation of a limited liability company, a  
546 person becomes a member:

547 (a) As provided in the operating agreement;

548 (b) As the result of a merger, interest exchange,  
549 conversion, or domestication under ss. 605.1001-605.1072, as  
550 applicable;

551 (c) With the consent of all the members; or

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552 (d) As provided in s. 605.0701(3).

553 Section 20. Effective upon this act becoming a law and  
554 operating retroactively to January 1, 2015, paragraph (a) of  
555 subsection (1) of section 605.04074, Florida Statutes, is  
556 amended to read:

557 605.04074 Agency rights of members and managers.—

558 (1) In a member-managed limited liability company, the  
559 following rules apply:

560 (a) Except as provided in subsection (3), each member is an  
561 agent of the limited liability company for the purpose of its  
562 activities and affairs, ~~and~~ an act of a member, including  
563 signing an agreement or instrument of transfer in the name of  
564 the company for apparently carrying on in the ordinary course of  
565 the company's activities and affairs or activities and affairs  
566 of the kind carried on by the company, binds the company unless  
567 the member had no authority to act for the company in the  
568 particular matter and the person with whom the member was  
569 dealing knew or had notice that the member lacked authority.

570 Section 21. Effective upon this act becoming a law and  
571 operating retroactively to January 1, 2015, paragraph (b) of  
572 subsection (2) of section 605.04091, Florida Statutes, is  
573 amended to read:

574 605.04091 Standards of conduct for members and managers.—

575 (2) The duty of loyalty is limited to:

576 (b) Refraining from dealing with the company in the conduct  
577 or winding up of the company's activities and affairs as, or on  
578 behalf of, a person having an interest adverse to the company,  
579 except to the extent that a transaction satisfies the  
580 requirements of s. 605.04092 ~~this section~~; and

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581 Section 22. Subsection (3) of section 605.0712, Florida  
582 Statutes, is amended to read:

583 605.0712 Other claims against a dissolved limited liability  
584 company.—

585 (3) A claim that is not barred by this section, ~~s.~~  
586 ~~608.0711~~, or another statute limiting actions, may be enforced:

587 (a) Against a dissolved limited liability company, to the  
588 extent of its undistributed assets; and

589 (b) Except as otherwise provided in s. 605.0713, if assets  
590 of the limited liability company have been distributed after  
591 dissolution, against a member or transferee to the extent of  
592 that person's proportionate share of the claim or of the  
593 company's assets distributed to the member or transferee after  
594 dissolution, whichever is less, but a person's total liability  
595 for all claims under this subsection may not exceed the total  
596 amount of assets distributed to the person after dissolution.

597 Section 23. Subsection (2) of section 605.0717, Florida  
598 Statutes, is amended to read:

599 605.0717 Effect of dissolution.—

600 (2) Except as provided in s. 605.0715(5) ~~605.0715(4)~~, the  
601 name of the dissolved limited liability company is not available  
602 for assumption or use by another business entity until 120 days  
603 after the effective date of dissolution or filing of a statement  
604 of termination, if earlier.

605 Section 24. Subsection (2) of section 605.0805, Florida  
606 Statutes, is amended to read:

607 605.0805 Proceeds and expenses.—

608 (2) If a derivative action ~~under s. 608.0802~~ is successful  
609 in whole or in part, the court may award the plaintiff

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610 reasonable expenses, including reasonable attorney fees and  
611 costs, from the recovery of the limited liability company.

612 Section 25. Effective upon this act becoming a law and  
613 operating retroactively to January 1, 2015 subsection (2) of  
614 section 606.06, Florida Statutes, is amended to read:

615 606.06 Uniform business report.—The department may use the  
616 uniform business report:

617 (2) As a substitute for any annual report or renewal filing  
618 required by chapters 495, 605, 607, ~~608~~, 609, 617, 620, 621, and  
619 865.

620 Section 26. Effective upon this act becoming a law and  
621 operating retroactively to January 1, 2015, paragraph (c) of  
622 subsection (2) of section 607.1108, Florida Statutes, is amended  
623 to read:

624 607.1108 Merger of domestic corporation and other business  
625 entity.—

626 (2) Pursuant to a plan of merger complying and approved in  
627 accordance with this section, one or more domestic corporations  
628 may merge with or into one or more other business entities  
629 formed, organized, or incorporated under the laws of this state  
630 or any other state, the United States, foreign country, or other  
631 foreign jurisdiction, if:

632 (c) Each domestic limited liability company that is a party  
633 to the merger complies with the applicable provisions of chapter  
634 605 ~~608~~.

635 Section 27. Effective upon this act becoming a law and  
636 operating retroactively to January 1, 2015, paragraph (d) of  
637 subsection (1) of section 607.1109, Florida Statutes, is amended  
638 to read:

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639 607.1109 Articles of merger.-

640 (1) After a plan of merger is approved by each domestic  
641 corporation and other business entity that is a party to the  
642 merger, the surviving entity shall deliver to the Department of  
643 State for filing articles of merger, which shall be executed by  
644 each domestic corporation as required by s. 607.0120 and by each  
645 other business entity as required by applicable law, and which  
646 shall set forth:

647 (d) A statement that the plan of merger was approved by  
648 each domestic limited liability company that is a party to the  
649 merger in accordance with the applicable provisions of chapter  
650 605 ~~608~~.

651 Section 28. Effective upon this act becoming a law and  
652 operating retroactively to January 1, 2015, subsection (7) of  
653 section 607.11101, Florida Statutes, is amended to read:

654 607.11101 Effect of merger of domestic corporation and  
655 other business entity.—When a merger becomes effective:

656 (7) The shares, partnership interests, interests,  
657 obligations, or other securities, and the rights to acquire  
658 shares, partnership interests, interests, obligations, or other  
659 securities, of each domestic corporation and other business  
660 entity that is a party to the merger shall be converted into  
661 shares, partnership interests, interests, obligations, or other  
662 securities, or rights to such securities, of the surviving  
663 entity or any other domestic corporation or other business  
664 entity or, in whole or in part, into cash or other property as  
665 provided in the plan of merger, and the former holders of  
666 shares, partnership interests, interests, obligations, or other  
667 securities, or rights to such securities, shall be entitled only

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668 to the rights provided in the plan of merger and to their  
669 appraisal rights, if any, under s. 605.1006, ss. 605.1061-  
670 605.1072, ss. 607.1301-607.1333, ~~ss. 608.4351-608.4355~~, ss.  
671 620.2114-620.2124, or other applicable law.

672 Section 29. Effective upon this act becoming a law and  
673 operating retroactively to January 1, 2015, paragraph (b) of  
674 subsection (2) of section 621.12, Florida Statutes, is amended  
675 to read:

676 621.12 Identification with individual shareholders or  
677 individual members.—

678 (2) The name shall also contain:

679 (b)1. In the case of a professional corporation, the words  
680 "professional association" or the abbreviation "P.A.;" or

681 2. In the case of a professional limited liability company  
682 formed before January 1, 2014, the words "professional limited  
683 company" or "professional limited liability company," the  
684 abbreviation "P.L." or "P.L.L.C." or the designation "PL" or  
685 "PLLC," in lieu of the words "limited company" or "limited  
686 liability company," or the abbreviation "L.C." or "L.L.C." or  
687 the designation "LC" or "LLC" as otherwise required under s.  
688 605.0112 or former s. 608.406.

689 3. In the case of a professional limited liability company  
690 formed on or after January 1, 2014, the words "professional  
691 limited liability company," the abbreviation "P.L.L.C." or the  
692 designation "PLLC," in lieu of the words "limited liability  
693 company," or the abbreviation "L.L.C." or the designation "LLC"  
694 as otherwise required under s. 605.0112.

695 Section 30. Effective upon this act becoming a law and  
696 operating retroactively to January 1, 2015, subsection (1) of

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697 section 636.204, Florida Statutes, is amended to read:

698 636.204 License required.—

699 (1) Before doing business in this state as a discount  
700 medical plan organization, an entity must be a corporation, a  
701 limited liability company, or a limited partnership,  
702 incorporated, organized, formed, or registered under the laws of  
703 this state or authorized to transact business in this state in  
704 accordance with chapter 605, part I of chapter 607, ~~chapter 608~~,  
705 chapter 617, chapter 620, or chapter 865, and must be licensed  
706 by the office as a discount medical plan organization or be  
707 licensed by the office pursuant to chapter 624, part I of this  
708 chapter, or chapter 641.

709 Section 31. Effective upon this act becoming a law and  
710 operating retroactively to January 1, 2015, subsection (1) of  
711 section 655.0201, Florida Statutes, is amended to read:

712 655.0201 Service of process, notice, or demand on financial  
713 institutions.—

714 (1) Process against any financial institution authorized by  
715 federal or state law to transact business in this state may be  
716 served in accordance with chapter 48, chapter 49, chapter 605,  
717 or part I of chapter 607, ~~or chapter 608~~, as appropriate.

718 Section 32. Effective upon this act becoming a law and  
719 operating retroactively to January 1, 2015, paragraph (c) of  
720 subsection (11) of section 658.2953, Florida Statutes, is  
721 amended to read:

722 658.2953 Interstate branching.—

723 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

724 (c) An out-of-state bank may establish and maintain a de  
725 novo branch or acquire a branch in this state upon compliance

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726 with chapter 605 or part I of chapter 607 ~~or chapter 608~~

727 relating to doing business in this state as a foreign business  
728 entity, including maintaining a registered agent for service of  
729 process and other legal notice pursuant to s. 655.0201.

730 Section 33. Effective upon this act becoming a law and  
731 operating retroactively to January 1, 2015, section 694.16,  
732 Florida Statutes, is amended to read:

733 694.16 Conveyances by merger or conversion of business  
734 entities.—As to any merger or conversion of business entities  
735 prior to June 15, 2000, the title to all real estate, or any  
736 interest therein, owned by a business entity that was a party to  
737 a merger or a conversion is vested in the surviving entity  
738 without reversion or impairment, notwithstanding the requirement  
739 of a deed which was previously required by s. 607.11101, former  
740 s. 608.4383, former s. 620.204, former s. 620.8904, or former s.  
741 620.8906.

742 Section 34. Section 31. Effective upon this act becoming a  
743 law and operating retroactively to January 1, 2015, paragraph  
744 (f) of subsection (2) of section 1002.395, Florida Statutes, is  
745 amended to read:

746 1002.395 Florida Tax Credit Scholarship Program.—

747 (2) DEFINITIONS.—As used in this section, the term:

748 (f) "Eligible nonprofit scholarship-funding organization"  
749 means a state university; or an independent college or  
750 university that is eligible to participate in the William L.  
751 Boyd, IV, Florida Resident Access Grant Program, located and  
752 chartered in this state, is not for profit, and is accredited by  
753 the Commission on Colleges of the Southern Association of  
754 Colleges and Schools; or is a charitable organization that:

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755 1. Is exempt from federal income tax pursuant to s.  
756 501(c)(3) of the Internal Revenue Code;  
757 2. Is a Florida entity formed under chapter 605, chapter  
758 607, ~~chapter 608~~, or chapter 617 and whose principal office is  
759 located in the state; and  
760 3. Complies with subsections (6) and (16).  
761 Section 35. Except as otherwise expressly provided in this  
762 act and except for this section, which shall take effect upon  
763 this act becoming a law, this act shall take effect July 1,  
764 2015.



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 25, 2015

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I respectfully request that **Senate Bill 554**, relating to Limited Liability Companies, be placed on the:

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

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

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Senator David Simmons  
Florida Senate, District 10

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/15  
Meeting Date

554  
Bill Number (if applicable)

Topic LLC

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 215 S. Monroe Street

Phone 205-900-8

TLH FL 32301  
City State Zip

Email greg.black@metzlaw.com

Speaking:  For  Against  Information

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

Representing Business Law Section

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1146

INTRODUCER: Health Policy Committee and Senator Simmons

SUBJECT: Agency Relationships with Governmental Health Care Contractors

DATE: April 1, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	<b>Fav/CS</b>
2.	Davis	Cibula	JU	<b>Favorable</b>
3.	Stovall	Phelps	RC	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1146 revises the description of volunteer, uncompensated services under the Access to Health Care Act (the act) that is established in s. 766.1115, F.S. Under the act, sovereign immunity applies for services provided by a health care provider that has entered into a contractual relationship to provide health care services to low-income recipients as an agent of the governmental contractor.

Specifically, the bill authorizes a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of the contracted services by volunteer health care providers, which may include employing providers to supplement, coordinate, or support the volunteers. The monies do not constitute compensation under this act from the governmental contractor for services provided under the contract.

The bill also authorizes a free clinic, while acting as an agent of the governmental contractor to allow a patient, or a parent or guardian of the patient, to pay a nominal fee per visit, not to exceed \$10, for administrative costs related to the services provided under the contract.

The bill also clarifies that employees and agents of a health care provider fall within the sovereign immunity protections of the contracted health care provider when providing health care services pursuant to the contract. Section 768.28, F.S., is likewise amended to specifically include a health care provider's employees or agents to avoid any potential ambiguity between the provisions in that section of law and the act.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the governmental contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons.

The bill has no fiscal impact on governmental entities.

## II. Present Situation:

### Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.<sup>1</sup> The act is administered by the Department of Health (department) through the Volunteer Health Services Program.<sup>2</sup>

This section of law extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.<sup>3</sup>

Health care providers under the act include:<sup>4</sup>

- A birth center licensed under ch. 383, F.S.<sup>5</sup>
- An ambulatory surgical center licensed under ch. 395, F.S.<sup>6</sup>
- A hospital licensed under ch. 395, F.S.<sup>7</sup>

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<sup>1</sup> Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed \$23,540 is at 200 percent of the federal poverty level using Medicaid data. See *2015 Poverty Guidelines, Annual Guidelines* at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2015-Federal-Poverty-level-charts.pdf> (last visited Mar. 7, 2015).

<sup>2</sup> See Florida Department of Health, *Volunteerism Volunteer Opportunities*, (last visited Mar. 7, 2015) <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html>; Rule Chapter 64I-2, F.A.C.

<sup>3</sup> Section 766.1115(3)(a), F.S.

<sup>4</sup> Section 766.1115(3)(d), F.S.

<sup>5</sup> Section 766.1115(3)(d)1., F.S.

<sup>6</sup> Section 766.1115(3)(d)2., F.S.

<sup>7</sup> Section 766.1115(3)(d)3., F.S.

- A physician or physician assistant licensed under ch. 458, F.S.<sup>8</sup>
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.<sup>9</sup>
- A chiropractic physician licensed under ch. 460, F.S.<sup>10</sup>
- A podiatric physician licensed under ch. 461, F.S.<sup>11</sup>
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the act.<sup>12</sup>
- A dentist or dental hygienist licensed under ch. 466, F.S.<sup>13</sup>
- A midwife licensed under ch. 467, F.S.<sup>14</sup>
- A health maintenance organization certificated under part I of ch. 641, F.S.<sup>15</sup>
- A health care professional association and its employees or a corporate medical group and its employees.<sup>16</sup>
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.<sup>17</sup>
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.<sup>18</sup>
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.<sup>19</sup>
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.<sup>20</sup>

The act further specifies additional contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.

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<sup>8</sup> Section 766.1115(3)(d)4., F.S.

<sup>9</sup> Section 766.1115(3)(d)5., F.S.

<sup>10</sup> Section 766.1115(3)(d)6., F.S.

<sup>11</sup> Section 766.1115(3)(d)7., F.S.

<sup>12</sup> Section 766.1115(3)(d)8., F.S.

<sup>13</sup> Section 766.1115(3)(d)13., F.S.

<sup>14</sup> Section 766.1115(3)(d)9., F.S.

<sup>15</sup> Section 766.1115(3)(d)10., F.S.

<sup>16</sup> Section 766.1115(3)(d)11., F.S.

<sup>17</sup> Section 766.1115(3)(d)12., F.S.

<sup>18</sup> Section 766.1115(3)(d)14., F.S.

<sup>19</sup> Section 766.1115(3)(d)15., F.S.

<sup>20</sup> Section 766.1115(3)(c), F.S.

- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.<sup>21</sup>
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.<sup>22</sup>

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.<sup>23</sup>

The individual accepting services through this contracted provider may not have medical or dental care insurance coverage for the illness, injury, or condition for which medical or dental care is sought.<sup>24</sup> Services not covered under the act include experimental procedures and clinically unproven procedures. The governmental contractor must determine whether a procedure is covered.

The health care provider may not subcontract for the provision of services under this chapter.<sup>25</sup>

In 2014, the Legislature amended the act to authorize dentists providing services as an agent of the governmental contractor to allow a patient to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided under the contract to the patient.<sup>26</sup>

According to the department, from July 1, 2012, through June 30, 2013, 13,543 licensed health care volunteers (plus an additional 26,002 clinic staff volunteers) provided 427,731 health care patient visits with a total value of donated goods and services of \$294,427,678 under the act.<sup>27</sup> The Florida Department of Financial Services, Division of Risk Management, reported on February 14, 2014, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.<sup>28</sup>

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<sup>21</sup> Section 766.1115(4), F.S.

<sup>22</sup> Rule 64I-2.003(2), F.A.C.

<sup>23</sup> Section 766.1115(5), F.S.

<sup>24</sup> Rule 64I-2.002(2), F.A.C.

<sup>25</sup> Rule 64I-2.004(2), F.A.C.

<sup>26</sup> Chapter 2014-108, s. 1, Laws of Fla.

<sup>27</sup> Department of Health, *Volunteer Health Services 2012-2013 Annual Report*, available at:

<http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/vhs1213annualreport2.pdf>, (last visited Mar. 7, 2015).

<sup>28</sup> Correspondence from Lewis R. Williams, Chief of State Liability and Property Claims, to Duane A. Ashe, Department of Health (Feb. 14, 2014) (on file with the Senate Committee on Health Policy).

### **Legislative Appropriation to Free and Charitable Clinics**

The Florida Association of Free and Charitable Clinics received a \$4.5 million appropriation in the 2014-2015 General Appropriations Act through the department.<sup>29</sup> The department restricted the use of these funds by free and charitable clinics that were health care providers under the act to clinic capacity building purposes in the contract which distributed this appropriation. The clinic capacity building was limited to products or processes that increase skills, infrastructure and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel. The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract. Accordingly, the department's interpretation precluded the use of the appropriation for this purpose.

### **Sovereign Immunity**

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.<sup>30</sup> The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.<sup>31</sup>

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.<sup>32</sup> In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

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<sup>29</sup> Chapter 2014-51, Laws of Fla., line item 461.

<sup>30</sup> Section 768.28(5), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.<sup>33</sup>

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.<sup>34</sup> The court explained:

Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS<sup>35</sup> Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.<sup>36</sup>

### III. Effect of Proposed Changes:

#### Access to Health Care Act (Section 1)

The bill authorizes a free clinic<sup>37</sup> to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act (the act) without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The bill states that the receipt and use of the

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<sup>33</sup> *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

<sup>34</sup> *Id.* at 703.

<sup>35</sup> Florida Department of Health and Rehabilitative Services.

<sup>36</sup> *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

<sup>37</sup> A free clinic for purposes of this provision is a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

appropriation or grant does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill also authorizes a free clinic to allow a patient, or a parent or guardian of the patient, to pay a nominal fee for administrative costs related to the services provided to the patient under the contract without jeopardizing the sovereign immunity protections afforded in the act. The fee may not exceed \$10 per visit and is a voluntary payment.

The bill inserts the phrase “employees or agents” in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract. Subsection (5) of the act currently recognizes employees and agents of a health care provider. This subsection requires the governmental contractor to provide written notice to each patient, or the patient’s legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider *or any employee or agent thereof* acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient’s legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons.

### **Sovereign Immunity (Section 2)**

Section 768.28, F.S., is likewise amended to specifically include a health care provider’s employees or agents so as to avoid any potential ambiguity between the provisions in that section of law and the act.

### **Additional Provisions and Effective Date**

The bill removes obsolete language and makes technical and grammatical changes.

The effective date of the bill is July 1, 2015.

## **IV. Constitutional Issues:**

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

This bill does not appear to have an impact on cities or counties and as such, it does not appear to be a mandate for constitutional purposes.

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

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Free clinics may receive up to \$10 per visit from patients who choose to pay the fee to cover administrative costs. The amount that may be collected is indeterminate. Likewise, some patients or recipients may voluntarily pay up to \$10 per visit to cover administrative costs.

Contracted free clinics may receive or continue to receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the act. The receipt of any such funding is speculative at this point and therefore the amount is indeterminate.

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: 766.1115 and 768.28.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Health Policy on March 10, 2015:**

The CS reinstates current law that in order to qualify as volunteer, uncompensated services, the health care provider may not receive compensation from the governmental contractor for any services provided under the contract. It adds authorization for a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit

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corporation to support the delivery of the contracted services by volunteer health care providers, which may include employing providers to supplement, coordinate, or support the volunteers. Additionally, it limits the administrative fee to free clinics and couches it in terms of “allowing” the patient to pay as opposed to the clinic “charging” the fee. The administrative fee is authorized per visit.

**B. Amendments:**

None.

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

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By the Committee on Health Policy; and Senator Simmons

588-02134-15

20151146c1

A bill to be entitled

An act relating to agency relationships with governmental health care contractors; amending s. 766.1115, F.S.; redefining terms; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; authorizing such health care provider to collect from a patient, or the parent or guardian of a patient, a nominal fee for administrative costs under certain circumstances; limiting the nominal fee; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; redefining the term "officer, employee, or agent" to include employees or agents of a health care provider; providing an effective date.

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

Section 1. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Contract" means an agreement executed in compliance

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with this section between a health care provider and a governmental contractor which allows the health care provider, or any employee or agent of the health care provider, to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services, ~~except as provided in paragraph (4) (g).~~ For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraphs (4) (g) and (h). A free clinic as described in subparagraph (3) (d) 14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of such contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. Such an appropriation or grant does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt and use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

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59 2. An ambulatory surgical center licensed under chapter  
60 395.

61 3. A hospital licensed under chapter 395.

62 4. A physician or physician assistant licensed under  
63 chapter 458.

64 5. An osteopathic physician or osteopathic physician  
65 assistant licensed under chapter 459.

66 6. A chiropractic physician licensed under chapter 460.

67 7. A podiatric physician licensed under chapter 461.

68 8. A registered nurse, nurse midwife, licensed practical  
69 nurse, or advanced registered nurse practitioner licensed or  
70 registered under part I of chapter 464 or any facility which  
71 employs nurses licensed or registered under part I of chapter  
72 464 to supply all or part of the care delivered under this  
73 section.

74 9. A midwife licensed under chapter 467.

75 10. A health maintenance organization certificated under  
76 part I of chapter 641.

77 11. A health care professional association ~~and its~~  
78 ~~employees~~ or a corporate medical group ~~and its employees~~.

79 12. Any other medical facility the primary purpose of which  
80 is to deliver human medical diagnostic services or which  
81 delivers nonsurgical human medical treatment, and which includes  
82 an office maintained by a provider.

83 13. A dentist or dental hygienist licensed under chapter  
84 466.

85 14. A free clinic that delivers only medical diagnostic  
86 services or nonsurgical medical treatment free of charge to all  
87 low-income recipients, except as provided in paragraph (4) (h).

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88 15. Any other health care professional, practitioner,  
89 provider, or facility under contract with a governmental  
90 contractor, including a student enrolled in an accredited  
91 program that prepares the student for licensure as any one of  
92 the professionals listed in subparagraphs 4.-9.

93

94 The term includes any nonprofit corporation qualified as exempt  
95 from federal income taxation under s. 501(a) of the Internal  
96 Revenue Code, and described in s. 501(c) of the Internal Revenue  
97 Code, which delivers health care services provided by licensed  
98 professionals listed in this paragraph, any federally funded  
99 community health center, and any volunteer corporation or  
100 volunteer health care provider that delivers health care  
101 services.

102 (4) CONTRACT REQUIREMENTS.—A health care provider that  
103 executes a contract with a governmental contractor to deliver  
104 health care services ~~on or after April 17, 1992,~~ as an agent of  
105 the governmental contractor, or any employee or agent of such  
106 health care provider, is an agent for purposes of s. 768.28(9),  
107 while acting within the scope of duties under the contract, if  
108 the contract complies with the requirements of this section and  
109 regardless of whether the individual treated is later found to  
110 be ineligible. A health care provider, or any employee or agent  
111 of the health care provider, shall continue to be an agent for  
112 purposes of s. 768.28(9) for 30 days after a determination of  
113 ineligibility to allow for treatment until the individual  
114 transitions to treatment by another health care provider. A  
115 health care provider under contract with the state, or any  
116 employee or agent of such health care provider, may not be named

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117 as a defendant in any action arising out of medical care or  
 118 treatment ~~provided on or after April 17, 1992~~, under contracts  
 119 entered into under this section. The contract must provide that:

120 (a) The right of dismissal or termination of any health  
 121 care provider delivering services under the contract is retained  
 122 by the governmental contractor.

123 (b) The governmental contractor has access to the patient  
 124 records of any health care provider delivering services under  
 125 the contract.

126 (c) Adverse incidents and information on treatment outcomes  
 127 must be reported by any health care provider to the governmental  
 128 contractor if the incidents and information pertain to a patient  
 129 treated under the contract. The health care provider shall  
 130 submit the reports required by s. 395.0197. If an incident  
 131 involves a professional licensed by the Department of Health or  
 132 a facility licensed by the Agency for Health Care  
 133 Administration, the governmental contractor shall submit such  
 134 incident reports to the appropriate department or agency, which  
 135 shall review each incident and determine whether it involves  
 136 conduct by the licensee that is subject to disciplinary action.  
 137 All patient medical records and any identifying information  
 138 contained in adverse incident reports and treatment outcomes  
 139 which are obtained by governmental entities under this paragraph  
 140 are confidential and exempt from the provisions of s. 119.07(1)  
 141 and s. 24(a), Art. I of the State Constitution.

142 (d) Patient selection and initial referral must be made by  
 143 the governmental contractor or the provider. Patients may not be  
 144 transferred to the provider based on a violation of the  
 145 antidumping provisions of the Omnibus Budget Reconciliation Act

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146 of 1989, the Omnibus Budget Reconciliation Act of 1990, or  
 147 chapter 395.

148 (e) If emergency care is required, the patient need not be  
 149 referred before receiving treatment, but must be referred within  
 150 48 hours after treatment is commenced or within 48 hours after  
 151 the patient has the mental capacity to consent to treatment,  
 152 whichever occurs later.

153 (f) The provider is subject to supervision and regular  
 154 inspection by the governmental contractor.

155 (g) ~~As an agent of the governmental contractor for purposes~~  
 156 ~~of s. 768.28(9), while acting within the scope of duties under~~  
 157 ~~the contract,~~ A health care provider licensed under chapter 466,  
 158 as an agent of the governmental contractor for purposes of s.  
 159 768.28(9), may allow a patient, or a parent or guardian of the  
 160 patient, to voluntarily contribute a monetary amount to cover  
 161 costs of dental laboratory work related to the services provided  
 162 to the patient within the scope of duties under the contract.  
 163 This contribution may not exceed the actual cost of the dental  
 164 laboratory charges.

165 (h) A health care provider that is a free clinic under  
 166 subparagraph (3)(d)14., as an agent of the governmental  
 167 contractor for purposes of s. 768.28(9), may allow a patient, or  
 168 a parent or guardian of the patient, to pay a nominal fee for  
 169 administrative costs related to the services provided to the  
 170 patient under the contract. For purposes of this paragraph, a  
 171 nominal fee may not exceed \$10 per visit.

172  
 173 A governmental contractor that is also a health care provider is  
 174 not required to enter into a contract under this section with

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175 respect to the health care services delivered by its employees.  
 176 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental  
 177 contractor must provide written notice to each patient, or the  
 178 patient’s legal representative, receipt of which must be  
 179 acknowledged in writing at the initial visit, that the provider  
 180 is an agent of the governmental contractor and that the  
 181 exclusive remedy for injury or damage suffered as the result of  
 182 any act or omission of the provider or of any employee or agent  
 183 thereof acting within the scope of duties pursuant to the  
 184 contract is by commencement of an action pursuant to ~~the~~  
 185 ~~provisions of s. 768.28.~~ Thereafter, and with respect to any  
 186 federally funded community health center, the notice  
 187 requirements may be met by posting in a place conspicuous to all  
 188 persons a notice that the health care provider ~~federally funded~~  
 189 ~~community health center~~ is an agent of the governmental  
 190 contractor and that the exclusive remedy for injury or damage  
 191 suffered as the result of any act or omission of the provider or  
 192 of any employee or agent thereof acting within the scope of  
 193 duties pursuant to the contract is by commencement of an action  
 194 pursuant to ~~the provisions of s. 768.28.~~

195 Section 2. Paragraph (b) of subsection (9) of section  
 196 768.28, Florida Statutes, is amended to read:

197 768.28 Waiver of sovereign immunity in tort actions;  
 198 recovery limits; limitation on attorney fees; statute of  
 199 limitations; exclusions; indemnification; risk management  
 200 programs.—

201 (9)

202 (b) As used in this subsection, the term:

203 1. “Employee” includes any volunteer firefighter.

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204 2. “Officer, employee, or agent” includes, but is not  
 205 limited to, any health care provider, and its employees or  
 206 agents, when providing services pursuant to s. 766.1115; any  
 207 nonprofit independent college or university located and  
 208 chartered in this state which owns or operates an accredited  
 209 medical school, and its employees or agents, when providing  
 210 patient services pursuant to paragraph (10)(f); and any public  
 211 defender or her or his employee or agent, including, among  
 212 others, an assistant public defender and an investigator.  
 213 Section 3. This act shall take effect July 1, 2015.

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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)

4/2/15

Meeting Date

1146

Bill Number (if applicable)

Topic Agency Relationships

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address:

Phone

Street

Tallahassee

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing Florida Association of Free & Charitable Clinics

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 856

INTRODUCER: Rules Committee, Banking and Insurance Committee and Senator Latvala

SUBJECT: Vision Care Plans

DATE: April 3, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 856 prohibits an insurer, prepaid limited health service organization (PLHSO), or a health maintenance organization (HMO) from requiring a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another insurer's, PLHSO's, or HMO's vision network, respectively. The bill provides that this provision would not prevent an insurer, PLHSO, or HMO from entering into a contract with another insurer's, PLHSO's, or HMO's vision care plan to use the vision network. The bill also prohibits these plans from limiting or restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical laboratories. The bill provides that this provision does not limit or restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

The bill provides that a knowing violation of either of these provision described above constitutes an unfair insurance trade practice under s. 626.9541(1)(d), F.S.

The bill requires insurers, PLHSOs, and HMOs to update their online vision care network directory monthly to reflect currently participating providers in their respective network.

## **II. Present Situation:**

### **State Regulation of Insurance**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities. The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency pursuant to part III of ch. 641, F.S.

#### ***Prepaid Limited Health Service Organizations Contracts***

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include ambulance, dental, vision, mental health, substance abuse, chiropractic, podiatric, and pharmaceutical.<sup>1</sup> Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

#### ***Health Maintenance Organization Provider Contracts***

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment, and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying the payment of benefits for out-of-network services rendered to the member. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers.

#### ***Prohibition against "All Products" Clauses in Health Care Provider Contracts***

Section 627.6474(1), F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, exclusive provider organization, or preferred provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group.

### **State Group Insurance Program**

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance, administers the State Group Insurance Program providing employee benefits under a cafeteria plan consistent with Section 125, Internal Revenue Code. The Division of State Group Insurance offers a fully-insured vision insurance plan to eligible employees and their eligible dependents.

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<sup>1</sup> Section 636.003(5), F.S.

## Unfair Insurance Trade Practices

Part IX of ch. 626, F.S., regulates practices relating to the business of insurance by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices and prohibits those activities. Section 626.9541(1)(d), F.S., provides that the following acts are an unfair insurance trade practice:

Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Section 626.9521, F.S., provides administrative fines and criminal penalties for violations under s. 626.9541, F.S. Generally, the potential fines<sup>2</sup> under the Unfair Insurance Trade Practices Act include an amount not greater than \$5,000 for each nonwillful violation and not greater than \$40,000 for each willful violation. Such fines imposed against an insurer may not exceed an aggregate amount of \$20,000 for all nonwillful violations arising out of the same action; or an aggregate amount of \$200,000 for all willful violations arising out of the same action.<sup>3</sup> The fines may be imposed in addition to any other applicable penalty.<sup>4</sup> Further, the OIR is authorized to issue cease and desist orders and suspend or revoke an entity's certificate of authority for engaging in unfair insurance trade practices.<sup>5</sup>

## Credentialing

Section 641.495(6), F.S., provides that each HMO must have a system for verification and examination of the credentials of each of its providers. If the organization has delegated the credentialing process to a contracted provider or entity, it must verify that the policies and procedures of the delegated provider or entity are consistent with the policies and procedures of the organization and there is evidence of oversight activities of the organization to determine that required standards are met and maintained.<sup>6</sup> Preferred provider organizations also subject providers to credentialing.

Credentialing is a process for the collection and verification of a provider's professional qualifications. The qualifications that are reviewed and verified include, but are not limited to, relevant training, licensure, certification and/or registration to practice in a health care field, experience, and academic background. A credentialing process is used by: healthcare facilities as part of its process to allow practitioners to provide services at its facilities; health plans to allow providers to participate in its network (provider enrollment); medical group when hiring new providers; and other healthcare entities that have a need to hire or otherwise engage providers.

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<sup>2</sup> Section 626.9521(2), F.S.

<sup>3</sup> Section 626.9521(3), F.S., provides exceptions to these caps.

<sup>4</sup> Section 626.9521(2), F.S.

<sup>5</sup> Section 626.9581, F.S.

<sup>6</sup> Agency for Health Care Administration, *Interpretive Guidelines for Initial Health Care Provider Certificates for Health Maintenance Organizations and Prepaid Health Clinics*, (2010).

### III. Effect of Proposed Changes:

**Sections 1, 2, and 3** amend ss. 627.6474, 636.035, and 641.315, F.S., to prohibit an insurer, PLHSO, and HMO from requiring a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another insurer's, PLHSO's, or HMO's network, respectively. The bill provides that this provision would not prevent an insurer, PLHSO, or HMO from entering into a contract with another insurer's, PLHSO's, or HMO's vision care plan to use the vision network.

Further, the bill prohibits these plans from limiting or restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical laboratories. The bill provides that this provision does not limit or restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

The bill provides that a knowing violation of either of these provision described above constitutes an unfair insurance trade practice under s. 626.9541(1)(d), F.S., which relates to any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

The bill requires an insurer, PLHSO, or a HMO to update their online vision care network directory monthly to reflect currently participating providers in their respective network.

**Section 4** provides the bill is effective January 1, 2016.

### IV. Constitutional Issues:

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

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

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

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

The general rule of law is that legislation applies prospectively and not retrospectively. In other words, this bill will not apply retroactively to impair the effectiveness of contracts already in existence on the date this legislation becomes effective. It will apply only to contracts signed on or after the effective date of the bill.

The State Constitution provides that “No... law impairing the obligation of contracts shall be passed.”<sup>7</sup> The Florida Supreme Court<sup>8</sup> has noted that “Virtually no degree of contract impairment has been tolerated in this state” and strongly favors the sanctity of contracts. Accordingly, contracts already in existence on the date this bill becomes effective will remain in effect between the parties to the contracts, regardless of the language in this bill. However, to avoid confusion, the Legislature may wish to expressly state in the bill that it does not apply to existing contracts.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A licensed ophthalmologist, optometrist or optician contracting with an insurer, PLHSO, or HMO would not be required to purchase materials and services from specific suppliers or optical laboratories. This gives the network provider flexibility in the acquisition and provision of those materials or services.

Further, a health plan could not require a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another plan’s vision network.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends sections 627.6474, 636.035, and 641.315 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.)

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<sup>7</sup> FLA. CONST. art. I, s. 10.

<sup>8</sup> *Yamaha Part Distributors Inc., et al, v. Ehrman et al.*, 316 So. 2d 557, 559 (Fla 1975).

**CS/CS by Rules on April 2, 2015:**

The CS/CS prohibits an insurer, PLHSO, and HMO from restricting or limiting a licensed ophthalmologist, optometrist, or an optician to specific suppliers of materials or optical laboratories. The prior CS prohibited a health plan from requiring a licensee from purchasing material or service from an entity that had a direct or indirect ownership, financial, or controlling interest with an insurer, PLHSO, or HMO.

The CS clarifies that an insurer, PLHSO, and HMO may not require a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another plan's network.

A knowing violation of either of these provisions described above constitutes a violation under s. 626.9541(1)(d), F.S.

The CS requires an insurer, PLHSO, and HMO to update their respective online, vision care network directory on a monthly basis.

**CS by Banking and Insurance on March 17, 2015**

The CS amends the Insurance Code rather than ch. 501, F.S. The CS also provides that violations under the bill constitute an unfair insurance trade practice under part IX of ch. 626, F.S., of the Insurance Code rather than a violation of the Florida Deceptive and Unfair Trade Practices Act, under part II of ch. 501, F.S.

**B. Amendments:**

None.



490478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

The Committee on Rules (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (3) is added to section 627.6474,  
Florida Statutes, to read:

627.6474 Provider contracts.—

(3) (a) A health insurer may not require an ophthalmologist  
licensed pursuant to chapter 458 or chapter 459 or an  
optometrist licensed pursuant to chapter 463 to join a network  
solely for the purpose of credentialing the licensee for another



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12 insurer's vision network. This paragraph does not prevent a  
13 health insurer from entering into a contract with another  
14 insurer's vision care plan to use the vision network.

15 (b) A health insurer may not restrict or limit an  
16 ophthalmologist licensed pursuant to chapter 458 or chapter 459,  
17 an optometrist licensed pursuant to chapter 463, or an optician  
18 licensed pursuant to part I of chapter 484 to specific suppliers  
19 of materials or optical laboratories. This paragraph does not  
20 restrict or limit a health insurer in determining specific  
21 amounts of coverage or reimbursement for the use of network or  
22 out-of-network suppliers or laboratories.

23 (c) A health insurer's online vision care network provider  
24 directory must be updated monthly to reflect the vision care  
25 providers currently participating in the health insurer's  
26 network.

27 (d) A knowing violation of paragraph (a) or paragraph (b)  
28 constitutes an unfair insurance trade practice under  
29 s.626.9541(1)(d).

30 Section 2. Subsection (14) is added to section 636.035,  
31 Florida Statutes, to read:

32 636.035 Provider arrangements.—

33 (14) (a) A prepaid limited health service organization may  
34 not require an ophthalmologist licensed pursuant to chapter 458  
35 or chapter 459 or an optometrist licensed pursuant to chapter  
36 463 to join a network solely for the purpose of credentialing  
37 the licensee for another organization's vision network. This  
38 paragraph does not prevent such organization from entering into  
39 a contract with another organization's vision care plan to use  
40 the vision network.



41 (b) A prepaid limited health service organization may not  
42 restrict or limit an ophthalmologist licensed pursuant to  
43 chapter 458 or chapter 459, an optometrist licensed pursuant to  
44 chapter 463, or an optician licensed pursuant to part I of  
45 chapter 484 to specific suppliers of materials or optical  
46 laboratories. This paragraph does not restrict or limit such  
47 organization in determining specific amounts of coverage or  
48 reimbursement for the use of network or out-of-network suppliers  
49 or laboratories.

50 (c) A prepaid limited health service organization's online  
51 vision care network provider directory must be updated monthly  
52 to reflect the vision care providers currently participating in  
53 the organization's network.

54 (d) A knowing violation of paragraph (a) or paragraph (b)  
55 constitutes an unfair insurance trade practice under s.  
56 626.9541(1)(d).

57 Section 3. Subsection (12) is added to section 641.315,  
58 Florida Statutes, to read:

59 641.315 Provider contracts.—

60 (12) (a) A health maintenance organization may not require  
61 an ophthalmologist licensed pursuant to chapter 458 or chapter  
62 459 or an optometrist licensed pursuant to chapter 463 to join a  
63 network solely for the purpose of credentialing the licensee for  
64 another organization's vision network. This paragraph does not  
65 prevent such organization from entering into a contract with  
66 another organization's vision care plan to use the vision  
67 network.

68 (b) A health maintenance organization may not restrict or  
69 limit an ophthalmologist licensed pursuant to chapter 458 or



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70 chapter 459, an optometrist licensed pursuant to chapter 463, or  
71 an optician licensed pursuant to part I of chapter 484 to  
72 specific suppliers of materials or optical laboratories. This  
73 paragraph does not restrict or limit such organization in  
74 determining specific amounts of coverage or reimbursement for  
75 the use of network or out-of-network suppliers or laboratories.

76 (c) A health maintenance organization's online vision care  
77 network provider directory must be updated monthly to reflect  
78 the vision care providers currently participating in the  
79 organization's network.

80 (d) A knowing violation of paragraph (a) or paragraph (b)  
81 constitutes an unfair insurance trade practice under s.  
82 626.9541(1)(d).

83 Section 4. This act shall take effect on January 1, 2016.

84  
85 ===== T I T L E A M E N D M E N T =====

86 And the title is amended as follows:

87 Delete everything before the enacting clause  
88 and insert:

89 A bill to be entitled  
90 An act relating to vision care plans; amending ss.  
91 627.6474, 636.035, and 641.315, F.S.; providing that a  
92 health insurer, a prepaid limited health service  
93 organization, and a health maintenance organization,  
94 respectively, may not require a licensed  
95 ophthalmologist or optometrist to join a network  
96 solely for the purpose of credentialing the licensee  
97 for another vision network; providing that such  
98 insurers and organizations are not prevented by the



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99 act from entering into a contract with another vision  
100 care plan; providing that such insurers or  
101 organizations may not restrict or limit a licensed  
102 ophthalmologist, optometrist, or optician to specific  
103 suppliers of materials or optical laboratories;  
104 providing that such insurers and organizations are not  
105 restricted or limited by the act in determining  
106 certain amounts of coverage or reimbursement;  
107 requiring such insurers' and organizations' online  
108 vision care network provider directories to be updated  
109 monthly; providing that a violation of certain  
110 prohibitions in the act constitutes a specified unfair  
111 insurance trade practice; providing an effective date.

By the Committee on Banking and Insurance; and Senator Latvala

597-02407-15

2015856c1

1 A bill to be entitled  
 2 An act relating to health provider contracts; amending  
 3 ss. 627.6474, 636.035, and 641.315, F.S.; providing  
 4 that a contract between a health insurer, a prepaid  
 5 limited health service organization, or a health  
 6 maintenance organization, respectively, or a third-  
 7 party administrator thereof, and a licensed  
 8 ophthalmologist or optometrist may not require the  
 9 licensee to provide vision care services as a  
 10 condition of providing any other service or to  
 11 purchase certain materials or services from specified  
 12 entities; providing that a contract between a health  
 13 insurer, a prepaid limited health service  
 14 organization, or a health maintenance organization,  
 15 respectively, or a third-party administrator thereof,  
 16 and a licensed optician may not require the licensee  
 17 to purchase certain materials from specified entities;  
 18 providing that a violation of the act's prohibitions  
 19 constitutes a specified unfair insurance trade  
 20 practice; providing an effective date.

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

22 Section 1. Subsection (3) is added to section 627.6474,  
 23 Florida Statutes, to read:

24 627.6474 Provider contracts.-

25 (3) (a) A contract between a health insurer or the insurer's  
 26 third-party administrator and:

27 1. An ophthalmologist licensed pursuant to chapter 458 or  
 28

29 Page 1 of 4

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

597-02407-15

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30 chapter 459 or an optometrist licensed pursuant to chapter 463  
 31 may not require such licensee to:  
 32 a. Provide vision care services as a condition of  
 33 participating as a provider of any other type of service to an  
 34 insured; or  
 35 b. Purchase a material or service used by the licensee from  
 36 an entity in which the insurer or the insurer's third-party  
 37 administrator has a direct or indirect ownership, financial, or  
 38 controlling interest.  
 39 2. An optician licensed pursuant to part I of chapter 484  
 40 may not require such licensee to purchase a material used by the  
 41 licensee from an entity in which the insurer or the insurer's  
 42 third-party administrator has a direct or indirect ownership,  
 43 financial, or controlling interest.  
 44 (b) A violation of this subsection constitutes an unfair  
 45 insurance trade practice under s. 626.9541(1)(d).  
 46 Section 2. Subsection (14) is added to section 636.035,  
 47 Florida Statutes, to read:  
 48 636.035 Provider arrangements.-  
 49 (14) (a) A contract between a prepaid limited health service  
 50 organization or the organization's third party administrator  
 51 and:  
 52 1. An ophthalmologist licensed pursuant to chapter 458 or  
 53 chapter 459 or an optometrist licensed pursuant to chapter 463  
 54 may not require such licensee to:  
 55 a. Provide vision care services as a condition of  
 56 participating as a provider of any other type of service to a  
 57 subscriber; or  
 58 b. Purchase a material or service used by the licensee from

Page 2 of 4

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

597-02407-15

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59 an entity in which the organization or organization's third-  
 60 party administrator has a direct or indirect ownership,  
 61 financial, or controlling interest.

62 2. An optician licensed pursuant to part I of chapter 484  
 63 may not require such licensee to purchase a material used by the  
 64 licensee from an entity in which the organization or  
 65 organization's third-party administrator has a direct or  
 66 indirect ownership, financial, or controlling interest.

67 (b) A violation of this subsection constitutes an unfair  
 68 insurance trade practice under s. 626.9541(1)(d).

69 Section 3. Subsection (12) is added to section 641.315,  
 70 Florida Statutes, to read:

71 641.315 Provider contracts.-

72 (12) (a) A contract between a health maintenance  
 73 organization or the organization's third-party administrator  
 74 and:

75 1. An ophthalmologist licensed pursuant to chapter 458 or  
 76 chapter 459 or an optometrist licensed pursuant to chapter 463  
 77 may not require such licensee to:

78 a. Provide vision care services as a condition of  
 79 participating as a provider of any other type of service to a  
 80 subscriber; or

81 b. Purchase a material or service used by the licensee from  
 82 an entity in which the organization or organization's third-  
 83 party administrator has a direct or indirect ownership,  
 84 financial, or controlling interest.

85 2. An optician licensed pursuant to part I of chapter 484  
 86 may not require such licensee to purchase a material used by the  
 87 licensee from an entity in which the organization or

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

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88 organization's third-party administrator has a direct or  
 89 indirect ownership, financial, or controlling interest.

90 (b) A violation of this subsection constitutes an unfair  
 91 insurance trade practice under s. 626.9541(1)(d).

92 Section 4. This act shall take effect July 1, 2015.

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

**SENATOR JACK LATVALA**  
20th District

March 24, 2015

The Honorable David Simmons, Chairman  
Senate Committee on Rules  
402 Senate  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Simmons:

I respectfully request consideration of Senate Bill 856/Vision Insurance by the Senate Committee on Rules at your earliest convenience. The bill was referred favorably by the Judiciary Committee on March 24.

This bill will prohibit insurance companies from requiring a licensed ophthalmologist or optometrist to provide vision care services under specified circumstances or to purchase certain materials or services as a condition for participating as a provider.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala  
State Senator  
District 20

Cc: John Phelps, Staff Director; Cissy DuBose, Administrative Assistant

**REPLY TO:**

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-2015

Meeting Date

856

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St Petersburg

City

FL

State

33705

Zip

Email justree2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/15  
Meeting Date

856  
Bill Number (if applicable)

Topic VISION SERVICE PLANS

Amendment Barcode (if applicable)

Name DAVID RAMBA

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

Address 120 S. MONROE ST.  
Street

Phone 850-727-7087

TALLAHASSEE FL 32301  
City State Zip

Email david@rambaconsulting.com

Speaking:  For  Against  Information

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

Representing FLORIDA OPTOMETRIC 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1446

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senator Richter

SUBJECT: Public Records/Department of Agriculture and Consumer Services

DATE: April 3, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1446 creates a new public records exemption for the Department of Agriculture and Consumer Services (DACS). The exemption provides that criminal or civil intelligence, investigative information, or any other information provided to DACS by another state or federal agency as part of a joint or multiagency examination will be confidential and exempt from public disclosure if it is similarly confidential or exempt under the other state or federal agency's laws or regulations.

This exemption does not apply to information obtained or developed by DACS that would otherwise be available for public inspection if DACS performed an independent investigation.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

## II. Present Situation:

### Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>2</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided by the Florida Constitution.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>5</sup> The Sunshine Law<sup>6</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>7</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>8</sup> An exemption must specifically state the public necessity justifying the exemption<sup>9</sup> and must be tailored to accomplish the stated purpose of the law.<sup>10</sup>

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

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

<sup>3</sup> FLA. CONST., art. I, s. 24(b).

<sup>4</sup> Chapter 119, F.S.

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

<sup>6</sup> Section 286.011, F.S.

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

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

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

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

## Open Government Sunset Review Act

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

The OGSR 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.<sup>13</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>14</sup>
- 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;<sup>15</sup> or
- It protects trade or business secrets.<sup>16</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida’s open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>17</sup>

The OGSR Act also requires specified questions to be considered during the review process.<sup>18</sup> In examining an exemption, the OGSR Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

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

<sup>12</sup> Section 119.15(3), F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> Section 119.15(6)(b)1., F.S.

<sup>15</sup> Section 119.15(6)(b)2., F.S.

<sup>16</sup> Section 119.15(6)(b)3., F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> 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?

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

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.<sup>20</sup>

### **The Department of Agriculture and Consumer Services**

The Department of Agriculture and Consumer Services (DACS) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.<sup>21</sup>

DACS investigates and regulates several professions in Florida. Most recently DACS's oversight and regulation of charitable organizations was significantly expanded to include oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors.<sup>22</sup>

Florida's public record laws currently make any information obtained by DACS in administrative and civil investigations open to the public. According to DACS, this presents a hurdle to partnering with other state and federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS), because DACS cannot maintain the same level of privacy adopted and required by those federal and other state agencies.<sup>23</sup> As a result, DACS's investigations are hindered because it is often unable to gather pertinent information from, enter into confidentiality agreements with, or participate in multi-jurisdiction task forces with other state and federal agencies.

The FTC operates a Consumer Sentinel database that is protected from public record disclosure. Information from this database can only be provided to a state agency that agrees not to disseminate the information.<sup>24</sup> This database contains information on subjects relating to:

- Identity Theft,
- Do-Not-Call Registry Violations,
- Computers, the Internet, and Online Auctions,
- Telemarketing Scams,
- Advance-fee loans and credit scams,
- Immigration services,
- Sweepstakes, Lotteries, and Prizes,
- Business Opportunities and Work-at-home Schemes,
- Health and Weight Loss Products, and
- Debt Collection, Credit Reports, and Financial Matters.

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

<sup>21</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

<sup>22</sup> See chapter 2014-122, L.O.F.

<sup>23</sup> Florida Department of Agriculture and Consumer Services, *HB 997 Agency Analysis*, (March 3, 2015) (on file with the Senate Committee on Commerce and Tourism).

<sup>24</sup> *Id.*

Additionally, the Internal Revenue Service (IRS) has expressed a willingness to share information on a case-by-case basis should DACS be able to prevent disclosure of the information beyond DACS.<sup>25</sup> The IRS has access to tax filing information that might be valuable to DACS when investigating whether an organization is compliant with Florida law.

### III. Effect of Proposed Changes:

The bill makes confidential and exempt criminal or civil intelligence or investigative information provided to DACS by another state or federal agency as part of a joint or multiagency examination or investigation if the information is confidential or exempt under the regulations or laws of the state or federal agency that provides the information. DACS will be able to obtain, use and release the information that is confidential or exempt under the laws or regulations of the state or federal source of information in accordance with conditions imposed by agreements DACS enters into with the other state or governmental entity.

This bill provides that DACS may release confidential and exempt information in furtherance of its official duties, and may release the information to another governmental agency in furtherance of that agency's official duties.

This exemption permits DACS to receive intelligence information that is confidential or exempt under the local, state and federal agency's laws or regulations, and therefore would otherwise be able to share data with DACS. This change will strengthen relations between DACS and other local, state, and federal agencies that will be able to share confidential investigatory information with DACS.

The bill provides that this exemption does not apply to all departmental investigations and regulatory functions.<sup>26</sup> Currently, information from most department investigations are public records, and this exemption will not apply to information obtained or developed by DACS if DACS obtained the information through an investigation that it conducts independently of any confidential information shared by other local, state or federal governmental sources or if the information is not confidential or exempt under the source government's laws.

As required by the Florida Constitution, the bill also contains a public necessity statement. The public necessity statement explains that DACS is currently being excluded from sources of information because they lack the authority to maintain confidentiality of the information they receive. The public necessity statement provides that this exemption is necessary for DACS to be able to perform its regulatory duties more efficiently.

The bill's exemption will expire on October 2, 2020, pursuant to the OGSR Act, unless saved by the Legislature through reenactment.

This bill goes into effect on the same date as SB 1444 or similar legislation takes effect if such legislation is adopted in the same legislative session. SB 1444 and CS/CS/SB 1446 do not appear to be directly related to each other. CS/CS/SB 1446 exempts from public records certain types of

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<sup>25</sup> *Id.*

<sup>26</sup> Senate Bill #1446- Public Records/Department of Agriculture and Consumer Services Bill Analysis, Dated March 3, 2015, on line at ABARS website.

investigatory information, while SB 1444 makes programmatic changes which do not appear to reference any need for a change in public records laws.

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

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

None.

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

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

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

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

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. Therefore, this bill includes a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to confidential criminal or civil intelligence or investigative information or any other information obtained from another state or federal regulatory agency as part of a multiagency examination or investigation. This bill does not exempt any information that DACS develops from its own investigations. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

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

None.

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

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

None.

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

Aggrieved members of the public may see a quicker resolution, including payment of restitution, to their complaints against fraudulent or unlicensed activity regulated by DACS.

C. **Government Sector Impact:**

The bill may make DACS's execution of its regulatory duties more efficient and thus less costly.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 570.077 of the Florida Statutes.

IX. **Additional Information:**

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

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

**CS/CS by Rules on April 2, 2015:**

The committee substitute clarifies that the exemptions afforded to the DACS by the bill apply only where the information is exempt under the providing state or federal agency's laws or regulations.

**CS by Governmental Oversight and Accountability on March 23, 2015:**

The CS makes the exemption more concise and provides DACS the authority to release confidential and exempt information for certain purposes. The CS also amends the public necessity statement to conform to the rest of the bill and adds a missing bill number in the contingent effective date clause.

B. **Amendments:**

None.



777322

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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The Committee on Rules (Richter) recommended the following:

**Senate Amendment**

Delete line 27

and insert:

justice agency which is confidential or exempt under the laws or regulations of that state or federal agency is confidential and exempt from s. 119.07(1) and

Delete line 50

and insert:

federal regulatory, administrative, or criminal justice agency



777322

12 which is confidential or exempt under the laws or regulations of  
13 that state or federal agency

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

585-02713-15

20151446c1

A bill to be entitled

An act relating to public records; creating s. 570.077, F.S.; providing an exemption from public records requirements for criminal or civil intelligence or investigative information, or any other information, held by the Department of Agriculture and Consumer Services as part of an investigation with another state or federal regulatory, administrative, or criminal justice agency; providing exceptions to the public records exemption; providing applicability; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 570.077, Florida Statutes, is created to read:

570.077 Confidentiality of intelligence or investigative information.—

(1) Criminal or civil intelligence or investigative information, or any other information, held by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The department may obtain, use, and release the information in accordance with the

Page 1 of 3

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

585-02713-15

20151446c1

conditions imposed by the joint or multiagency agreement.

(2) The department may release information that is made confidential and exempt under subsection (1):

(a) In the furtherance of its official duties and responsibilities.

(b) To another governmental agency in the furtherance of its official duties and responsibilities.

(3) The public record exemption provided in subsection (1) does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

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

Section 2. The Legislature finds that it is a public necessity that criminal or civil intelligence or investigative information, or any other information, held by the Department of Agriculture and Consumer Services as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Without the exemption, the department will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. With this exemption, the department should increase efficiency of investigations by saving time on developing investigative leads, witness data, and victim data. Furthermore, the exemption is necessary to enable the department

Page 2 of 3

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

585-02713-15

20151446c1

59 to participate in joint or multiagency investigations and  
60 examinations. Without the exemption, the department would  
61 continue to be excluded from information due to the inability to  
62 maintain investigative confidentiality. Without the sharing and  
63 coordination of information, governmental agencies may be  
64 required to conduct duplicative independent investigations or  
65 examinations in order to meet their regulatory responsibilities.  
66 With this exemption, the department will strengthen  
67 relationships with other local, state, and federal agencies,  
68 allowing them to become more efficient by sharing critical  
69 investigative data.

70 Section 3. This act shall take effect upon becoming a law  
71 if SB 1444 or similar legislation is adopted in the same  
72 legislative session or an extension thereof and becomes law.



The Florida Senate

## Committee Agenda Request

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

John B. Phelps, Staff Director  
Cissy DuBose, Committee Administrative Assistant

**Subject:** Committee Agenda Request

**Date:** March 24, 2015

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Honorable Chair Simmons,

I would like to respectfully request that **Senate Bill #1446**, relating to Public Records/Department of Agriculture and Consumer Services be placed on the Rules Committee agenda at your earliest possible convenience.

Any questions regarding this legislation, please do not hesitate to contact me or my staff.

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

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Senator Garrett Richter  
Florida Senate, District 23

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/15  
Meeting Date

SB 1446  
Bill Number (if applicable)

Topic Public Records / FDACS

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-2700

Tallahassee FL 32399  
City State Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking:  For  Against  Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 7040

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and  
Transportation Committee

SUBJECT: Public Records/E-mail Addresses/Department of Highway Safety and Motor Vehicles

DATE: April 2, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Jones</u>	<u>Eichin</u>		<b>TR Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	<u>Jones</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 7040 creates a new exemption from the public records inspection and access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for certain customer e-mail addresses held by the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill creates an exemption for e-mail addresses collected by the DHSMV for conducting driver license and motor vehicle record transactions.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also 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.

**II. Present Situation:**

**Public Records**

The Florida Constitution provides that the public has the right to access government records. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their

behalf.<sup>1</sup> In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act<sup>2</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>3</sup>

The Legislature may create an exemption to public records requirements.<sup>4</sup> An exemption must specifically state the public necessity justifying the exemption<sup>5</sup> and must be tailored to accomplish the stated purpose of the law.<sup>6</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records exemptions.<sup>7</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>8</sup>

The OGSR provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>9</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>10</sup>
- 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;<sup>11</sup> or

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

<sup>2</sup> Chapter 119, F.S.

<sup>3</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>4</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>5</sup> FLA. CONST., art. I, s. 24(c).

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

<sup>7</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>8</sup> Section 119.15(3), F.S.

<sup>9</sup> Section 119.15(6)(b), F.S.

<sup>10</sup> Section 119.15(6)(b)1., F.S.

<sup>11</sup> Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.<sup>12</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's public policy favoring open government and that the purpose of the exemption cannot be accomplished without the exemption.<sup>13</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>14</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>15</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>16</sup>

### **Public Records Status of E-mail Addresses and Agency Website Notice**

Under Florida law, e-mail addresses are public records.<sup>17</sup> Agency<sup>18</sup> websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send e-mail to the agency if they do not want their e-mail address released in response to a public records request.<sup>19</sup>

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<sup>12</sup> Section 119.15(6)(b)3., F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> 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?

<sup>15</sup> FLA. CONST., art. I, s. 24(c).

<sup>16</sup> Section 119.15(7), F.S.

<sup>17</sup> Section 119.011(12), F.S., defines "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." See Attorney General Opinion 96-34, May 15, 1996.

<sup>18</sup> 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."

<sup>19</sup> Section 668.6076, F.S.

## DHSMV

The DHSMV is the custodian of motor vehicle records<sup>20</sup> containing personal information about drivers and motor vehicle owners. Florida's motor vehicle records contain personal information such as a driver's social security number, driver license number, name, address, telephone number, and medical or disability information. Additionally, the DHSMV is authorized to collect e-mail addresses from customers and use e-mail for notification when conducting certain driver license and motor vehicle transactions.<sup>21</sup>

### Driver's Privacy Protection Act

Congress enacted the federal Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA prohibits the release and use of certain personal information from State motor vehicle records, and provides permissible uses and authorized disclosures of such information.<sup>22</sup> The DPPA defines "personal information" as information that identifies an individual, including the individual's:

- Photograph;
- Social security number;
- Driver identification number;
- Name;
- Address;
- Telephone number; and
- Medical or disability information.<sup>23</sup>

The DPPA also defines "highly restricted personal information" as:

- An individual's photograph or image
- Social security number
- Medical or disability information.<sup>24</sup>

Section 119.0712(2), F.S., provides that "personal information," including "highly restricted personal information," contained in a motor vehicle record, as defined by the DPPA, is confidential. This "personal information" may be released only as authorized by the DPPA. Furthermore, emergency contact information, including emergency contact e-mail addresses, contained in a motor vehicle record is confidential and exempt from the state's public records laws.<sup>25</sup> Without the express consent to whom such emergency contact information applies, the information may be released only to law enforcement agencies to contact those listed in the event of an emergency.<sup>26</sup>

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<sup>20</sup> Section 119.0712(2)(a), defines the term "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles."

<sup>21</sup> See ss. 319.40(3), 320.95(2), and 322.08(8), F.S.

<sup>22</sup> 18 U.S.C. s. 2721.

<sup>23</sup> 18 U.S.C. s. 2725(3).

<sup>24</sup> 18 U.S.C. s. 2725(4).

<sup>25</sup> Section 119.0712(2)(c), F.S.

<sup>26</sup> *Id.*

## E-mail Addresses and Crimes

The DHSMV was the subject of an e-mail phishing incident in which fraudsters used the Department's name and e-mail address, DoNotReply@flhsmv.gov, to send e-mails containing transactional receipts to the public. The e-mails directed the recipient to visit a third party website, which may have contained computer programs designed to harm the user.<sup>27</sup>

The Better Business Bureau posted an alert on its website, as well, warning individuals of e-mail phishing scams. They specifically address e-mails containing confirmation messages for recent driver license and vehicle registration renewals appearing to come from the DHSMV.<sup>28</sup> The e-mail includes a link directing the individual to a third-party website meant to download malware, which may be used to scan a computer for personal information that could be used for identity theft.

### III. Effect of Proposed Changes:

The bill makes customer e-mail addresses collected by the DHSMV exempt from the state's public records laws if the e-mail addresses are collected by the DHSMV specifically for:

- Sending a notification regarding motor vehicle titles, pursuant to s. 319.40(3), F.S.;
- Providing a renewal notice for a motor vehicle license or registration, pursuant to 320.95(2), F.S.; and
- Providing a renewal notice for a driver license or identification card, pursuant to 322.08(8), F.S.

The bill includes a retroactivity clause, therefore e-mail addresses which DHSMV previously collected for the aforementioned purposes will also be made exempt from public disclosure. The bill does not exempt e-mail addresses collected or held by the DHSMV for any purpose other than the ones enumerated above.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity states the Legislature finds e-mail addresses are unique to an individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams and invasive contacts. The public necessity statement provides that the exemption helps protect customers from this increased risk and outweighs the state's public policy favoring open government.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

The bill takes effect on July 1, 2015.

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<sup>27</sup> Department of Highway Safety and Motor Vehicles, *Fraudsters Use Agency's Name and Email Address for Phishing Expedition- Highway safety agency warns of email spam*, Press Release, Feb. 7, 2013, available at <http://www.flhsmv.gov/news/pdfs/PR020713a.pdf> (Last visited on March 1, 2015).

<sup>28</sup> Better Business Bureau, *Phishing Email Poses as Florida DMV*, Feb. 22, 2013, <http://www.bbb.org/blog/2013/02/phishing-email-poses-as-florida-dmv/> (Last visited March 1, 2015).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for customer e-mail addresses collected by the DHSMV; thus, it requires a two-thirds vote for final passage.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for customer e-mail addresses collected by the DHSMV; thus, it includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of DHSMV customers when those e-mail addresses are collected for the purposes named in the bill. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill provides greater consumer protection of DHSMV customer's e-mail addresses.

**C. Government Sector Impact:**

The bill may have a minimal fiscal impact on the DHSMV due to costs associated with training staff to comply with the new public records exemption, and redacting information prior to releasing a record.

To the extent this exemption encourages customers to choose to conduct driver license and motor vehicle record transactions via e-mail, the DHSMV will reduce the amount of money spent on postage.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0712 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on April 2, 2015:**

The CS removes use of the term “confidential” to clarify that customer e-mail addresses are “exempt,” not “confidential and exempt,” from the state’s public records laws.

**CS by Governmental Oversight and Accountability on March 23, 2015:**

- The CS includes a clause providing for retroactive application of the exemption.
- The CS removes the term “electronic mail” and replaces it with “e-mail.”

**B. Amendments:**

None.



632218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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The Committee on Rules (Lee) recommended the following:

**Senate Amendment**

Delete lines 47 - 48

and insert:

Such risk may be significantly limited by permitting the  
department to keep customer e-mail addresses exempt. The

By the Committees on Governmental Oversight and Accountability;  
and Transportation

585-02714-15

20157040c1

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing an exemption from public records requirements for e-mail addresses collected by the Department of Highway Safety and Motor Vehicles; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (2) of section 119.0712, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(c) E-mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to s. 319.40(3), s. 320.95(2), or s. 322.08(8) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies retroactively. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that customers' e-mail addresses collected and held by the Department of Highway Safety and Motor Vehicles for the

Page 1 of 2

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

585-02714-15

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purpose of conducting motor vehicle record and driver license transactions be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., as enacted and last amended in 2000, does not include e-mail addresses among the types of personal information protected from disclosure. Customer use of e-mail addresses in conducting motor vehicle and driver license record transactions electronically with the department has significantly increased since 1994 and 2000. Under current law, the e-mail addresses collected by the department are public records and can be obtained by anyone for any purpose. However, these e-mail addresses are unique to each individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contacts. The public availability of personal e-mail addresses puts department customers at increased risk of these problems. This risk may be significantly limited by permitting the department to keep customer e-mail addresses confidential. The Legislature finds that the risks to consumers outweigh the state's public policy favoring open government.

Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 23, 2015

---

I respectfully request that **Senate Bill #7040**, relating to **Public Records/Electronic Mail Addresses/Department of Highway Safety and Motor Vehicles**, 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 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-2015

Meeting Date

7040

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN P. HS

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St Petersburg FL 33705  
City State Zip

Email justree2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justree-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Rules

JOINT COMMITTEE:  
Joint Legislative Budget Commission,  
*Alternating Chair*

SENATOR TOM LEE  
24th District

April 2, 2015

The Honorable David Simmons  
Senate Committee on Rules, Chair  
400 Senate Office Building  
404 South Monroe St.  
Tallahassee, FL 32399

9/2/15  
O/K  
AMS

Dear Chairman Simmons,

I respectfully request to be excused from the Senate Committee on Rules on April 2, 2014 due to a previous commitment.

Thank you for your consideration.

Sincerely,

Tom Lee  
Senator, District 24

Cc: John B. Phelps, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

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

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Rules Committee

Case:  
Judge:

Type:

Started: 4/2/2015 11:33:33 AM  
Ends: 4/2/2015 1:01:20 PM Length: 01:27:48

11:33:35 AM Senator Simmons calls the meeting to order  
11:33:50 AM Roll call  
11:34:23 AM Quorum present  
11:34:29 AM Senator Simmons speaks  
11:35:26 AM CS/CS/SB 248  
11:35:40 AM Senator Smith explains the bill  
11:36:08 AM Amendment 108082  
11:36:13 AM Senator Smith explains the amendment  
11:38:15 AM Senator Joyner with a question  
11:39:00 AM Senator Smith responds  
11:39:45 AM Senator Joyner with a follow-up  
11:40:02 AM Senator Smith responds  
11:40:31 AM Senator Joyner with a follow-up  
11:40:47 AM Senator Smith responds  
11:41:15 AM Senator Joyner with a follow-up  
11:41:23 AM Senator Smith responds  
11:42:15 AM Senator Joyner with a follow-up  
11:42:37 AM Senator Smith responds  
11:42:45 AM Senator Gaetz with a question  
11:43:12 AM Senator Smith responds  
11:44:38 AM Frank Fabrizio, Florida Police Chief's Association, waives in support  
11:45:49 AM Robert Trammell, General Counsel, Florida Public Defender Association, waives in support  
11:46:30 AM Amendment 108082 is adopted without objection  
11:46:36 AM Back on the bill as amended  
11:46:49 AM Robert Trammel, waives in support  
11:46:54 AM Michelle Richardson, ACLU of Florida, speaks against the bill  
11:48:20 AM Senator Gaetz with a question  
11:48:55 AM Michelle Richardson responds  
11:49:37 AM Senator Gaetz with a follow-up  
11:50:05 AM Michelle Richardson responds  
11:50:38 AM Senator Gaetz with a follow-up  
11:51:06 AM Michelle Richardson responds  
11:51:35 AM Senator Gaetz comments  
11:51:43 AM Senator Soto with a question  
11:51:59 AM Michelle Richardson responds  
11:52:44 AM Sheriff Bob Gaultieri, Florida Sheriff's Association, speaks in support of the bill  
11:56:02 AM Senator Gibson with a question  
11:56:47 AM Bob Gaultieri responds  
11:57:20 AM Senator Gibson with a follow-up  
11:57:58 AM Senator Joyner with a comment  
11:58:59 AM Bob Gaultieri responds  
11:59:10 AM Senator Joyner comments  
11:59:34 AM Senator Soto with a question  
11:59:44 AM Bob Gaultieri responds  
12:00:08 PM Pamela Burch Fort, State Conference of NAACP, waives in opposition  
12:00:34 PM Kathleen Russell, Director of Government Relations, City of Orlando, waives in support  
12:00:59 PM Matt Puckett, Florida Police Benevolent Association, speaks in favor of the bill  
12:02:00 PM Jess McCarty, Assistant County Attorney, Miami-Dade County, waives in support  
12:02:17 PM Senator Soto speaks in debate  
12:03:13 PM Senator Smith closes on the bill  
12:05:00 PM Roll call  
12:05:33 PM CS/CS/CS/SB 248 is reported favorably

12:05:50 PM CS/SB 466 by Senator Flores  
12:06:02 PM William McRea explains the bill  
12:07:01 PM Casey Reed, State Director of Legislative Affairs, A T & T, waives in support  
12:07:27 PM Jorge Chamizo, Associated Industries of Florida & ADT, waives in support  
12:07:39 PM Brian Pitts, Justice-2-Jesus, speaks on the bill  
12:10:23 PM William McRea closes on the bill  
12:11:10 PM Roll call  
12:11:26 PM CS/SB 466 is reported favorably  
12:11:50 PM SB 562  
12:11:57 PM Senator Simpson explains the bill  
12:12:56 PM Senator Joyner with a question  
12:13:16 PM Senator Simpson responds  
12:14:13 PM Senator Soto with a question  
12:14:24 PM Senator Simpson responds  
12:15:06 PM Senator Soto with a follow-up  
12:15:14 PM Senator Simpson responds  
12:15:59 PM Charles Pattison, Policy Director, 1000 Friends of Florida, speaks against the bill  
12:17:08 PM Senator Montford with a question  
12:17:24 PM Charles Pattison responds  
12:17:30 PM Senator Montford with a follow-up  
12:17:40 PM Charles Pattison responds  
12:17:42 PM Senator Joyner with a question  
12:17:52 PM Charles Pattison responds  
12:17:59 PM Senator Soto with a question  
12:18:06 PM Charles Pattison responds  
12:18:16 PM Senator Gibson with a question  
12:18:30 PM Charles Pattison responds  
12:19:04 PM Senator Gibson with a follow-up  
12:19:14 PM Charles Pattison responds  
12:19:22 PM Senator Montford with a question  
12:19:48 PM Charles Pattison responds  
12:20:15 PM Eric Poole, Asst. Legislative Director, Florida Association of Counties, speaks against the bill  
12:23:26 PM Senator Gaetz with a question  
12:23:46 PM Eric Poole responds  
12:23:53 PM Senator Gaetz comments on the bill  
12:24:15 PM Eric Poole responds  
12:25:41 PM Gary Hunter, Association of Florida Community Developers, speaks for the bill  
12:28:25 PM Kari Hebrink, Florida Home Builders, waives in support  
12:28:44 PM David Cruz, Assistant General Counsel, Florida League of Cities, speaks against the bill  
12:29:20 PM Senator Simpson waives close  
12:29:31 PM Roll call  
12:29:57 PM SB 562 reported favorably  
12:30:06 PM CS/CS/SB 1094  
12:30:19 PM Senator Brandes explains the bill  
12:31:24 PM Amendment 955694  
12:31:40 PM Senator Brandes explains the amendment  
12:32:30 PM Senator Brandes waives close on the amendment  
12:32:40 PM With no objection, amendment is adopted  
12:32:43 PM Back on bill as amended  
12:32:52 PM Senator Brandes waives close  
12:33:05 PM Roll call  
12:33:32 PM CS/CS/CS/SB 1094 is reported favorably  
12:34:08 PM CS/SB 7040  
12:34:17 PM Senator Brandes explains the bill  
12:34:38 PM Amendment 632218  
12:34:49 PM Senator Brandes explains the amendment  
12:35:11 PM Senator Brandes waives close  
12:35:17 PM Amendment is adopted without objection  
12:35:24 PM Back on the bill as amended  
12:35:35 PM Brian Pitts waives in support  
12:35:42 PM Senator Brandes waives close  
12:35:48 PM Roll call

12:36:16 PM CS/CS/SB 7040 is reported favorably  
12:36:43 PM CS/SB 378  
12:37:09 PM Senator Gibson explains the bill  
12:38:24 PM Christian Minor, Director of Government Affairs, The Florida Smart Justice Alliance, waives in support  
12:38:38 PM Robert Trammell, General Counsel, Florida Public Defender Association, waives in support  
12:38:56 PM Sheriff Bob Gaultieri, Pinellas County, representing Florida Sheriff's Association, waives in support  
12:39:07 PM Samantha Padgett, General Counsel, Florida Retail Federation speaks on the bill  
12:40:34 PM Marty Cassini, Broward County, waives in support  
12:40:57 PM Laura Youmans, Florida Association of Counties, waives in support  
12:41:14 PM Ingrid Delgado, Associate for Social Concerns & Respect Life, Florida Conference of Catholic Bishops, waives in support  
12:41:26 PM Amy Mercer, Executive Director, Florida Police Chief's Association, waives in support  
12:41:37 PM Samantha Sexton, Associate Director Government Affairs, PACE Center for Girls, waives in support  
12:41:46 PM Brian Pitts waives in support  
12:42:01 PM Jess McCarty, Assistant County Attorney, Miami-Dade County, waives in support  
12:42:19 PM Senator Richter comments on the bill  
12:42:40 PM Senator Gibson waives close on the bill  
12:42:51 PM Roll call  
12:43:23 PM CS/SB 378 reported favorably  
12:43:44 PM CS/SB 856  
12:43:54 PM Senator Latvala explains the bill  
12:44:10 PM Amendment 490478  
12:44:21 PM Senator Latvala explains the amendment  
12:45:46 PM Senator Latvala waives close on amendment  
12:45:55 PM Amendment adopted without objection  
12:45:57 PM Back on the bill as amended  
12:46:17 PM David Ramba, Florida Optometric Association, waives in support  
12:46:19 PM Brian Pitts waives in support  
12:46:31 PM Senator Latvala waives close  
12:46:41 PM Roll call  
12:47:05 PM CS/CS/SB 856 is reported favorably  
12:47:16 PM CS/SB 1446  
12:47:24 PM Senator Richter explains the bill  
12:47:47 PM Amendment 777322  
12:47:56 PM Senator Richter explains the amendment  
12:48:29 PM Without objection, amendment is adopted  
12:48:41 PM Back on the bill as amended  
12:48:47 PM Jonathan Rees, Deputy Director, Legislative Affairs, Fla. DOACS, waives in support  
12:49:27 PM Senator Richter waives close  
12:49:46 PM Roll call  
12:50:12 PM CS/CS/SB 1446 is reported favorably  
12:50:38 PM Chair is turned over to Senator Soto  
12:50:51 PM CS/CS/SB 554  
12:51:01 PM Senator Simmons explains the bill  
12:52:11 PM Amendment 664452  
12:52:24 PM Senator Simmons explains the amendment  
12:53:12 PM Senator Simmons closes on amendment  
12:53:29 PM Voice vote - Amendment is adopted  
12:53:36 PM Back on bill as amended  
12:53:47 PM Greg Black, Attorney, Business Law Section, waives in support  
12:53:53 PM Senator Simmons waives close  
12:53:56 PM Roll call  
12:54:23 PM CS/CS/CS/SB 554 is reported favorably  
12:54:28 PM CS/SB 1146  
12:54:37 PM Senator Simmons explains the bill  
12:55:37 PM Alisa LaPolt, Florida Association of Free & Charitable Clinics, waives in support  
12:55:44 PM Brian Pitts, speaks on the bill  
12:56:49 PM Senator Simmons closes on the bill  
12:57:21 PM Roll call  
12:57:51 PM CS/SB 1146 is reported favorably  
12:57:52 PM Chair turned back over to Senator Simmons  
12:58:00 PM Senator Simmons comments

1:01:20 PM Senator Diaz de la Portilla moves we adjourn