Tab 1	**SB 7000** by **EN;** Identical to H 07001 OGSR/Site-specific Location Information for Endangered and Threatened Species

Tab 2	**SB 7004** by **CA;** Identical to H 07005 OGSR/Applicants or Participants in Certain Federal, State, or Local Housing Assistance Programs

Tab 3	**SB 7006** by **RI;** Public Records and Meetings/NG911 Systems

Tab 4	**SB 924** by **Calatayud;** Similar to H 00677 Coverage for Fertility Preservation Services

839076	A	S	GO, Calatayud	Delete L.26 - 57:	03/10 01:19 PM

Tab 5	**SB 1058** by **Gruters;** Similar to H 00549 Gulf of America

212152	D	S	GO, Gruters	Delete everything after	03/10 01:19 PM

Tab 6	**SB 448** by **Burgess;** Similar to H 00305 Administrative Procedure

520408	A	S	GO, Burgess	Delete L.118 - 385:	03/10 01:26 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Fine, Chair
Senator DiCeglie, Vice Chair

MEETING DATE: Tuesday, March 11, 2025
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Fine, Chair; Senator DiCeglie, Vice Chair; Senators Arrington, Brodeur, Grall, McClain, Polsky, and Rodriguez

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 7000** Environment and Natural Resources (Identical H 7001)	OGSR/Site-specific Location Information for Endangered and Threatened Species; Amending a provision which provides an exemption from public records requirements for site-specific location information for endangered and threatened species; removing the scheduled repeal of the exemption, etc. GO 03/11/2025 RC	
2	**SB 7004** Community Affairs (Identical H 7005)	OGSR/Applicants or Participants in Certain Federal, State, or Local Housing Assistance Programs; Amending a provision which provides an exemption from public records requirements for property photographs and personal identifying information of applicants for or participants in certain federal, state, or local housing assistance programs; deleting the scheduled repeal of the exemption, etc. GO 03/11/2025 RC	
3	**SB 7006** Regulated Industries	Public Records and Meetings/NG911 Systems; Expanding an exemption from public records requirements for certain components of 911, E911, and public safety radio communication systems to include NG911 systems; extending the date for future legislative review and repeal of the exemption; expanding an exemption from public meetings requirements for certain portions of meetings that would reveal certain components of 911, E911, and public safety radio communication systems to include NG911 systems; extending the date for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 03/11/2025 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 924** Calatayud (Similar H 677)	Coverage for Fertility Preservation Services; Requiring the Department of Management Services to provide coverage of certain fertility preservation services for state group health insurance plan policies issued on or after a specified date; prohibiting a state group health insurance plan from requiring preauthorization for certain covered services, etc. GO 03/11/2025 BI AP	
5	**SB 1058** Gruters (Similar H 549)	Gulf of America; Requiring state agencies to update geographic materials to reflect the new federal designation of the “Gulf of Mexico” as the “Gulf of America”; requiring district school boards and charter school governing boards to, beginning on a specified date, adopt and acquire specified materials and collections that reflect the new federal designation of the “Gulf of Mexico” as the “Gulf of America”; providing an honorary designation of a certain transportation facility in specified counties, etc. GO 03/11/2025 AED RC	
6	**SB 448** Burgess (Similar H 305)	Administrative Procedure; Specifying that an agency’s issuance of a guidance document or other statement interpreting a statute without express statutory delegation to issue such guidance is an invalid exercise of delegated legislative authority; prohibiting an agency from adopting a rule or issuing a guidance document without statutory delegation; requiring that additional information be published in the Florida Administrative Code; requiring the Administrative Procedures Committee to set expiration dates for existing rules, etc. GO 03/11/2025 JU RC	
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 7000
INTRODUCER:	Environment and Natural Resources Committee
SUBJECT:	OGSR/Site-specific Location Information for Endangered and Threatened Species
DATE:	March 10, 2025 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Carroll	Rogers		**EN Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Pre-meeting**
2.			RC	

I. Summary:

SB 7000 saves from repeal the current public records exemption making site-specific location information on endangered and threatened species exempt from public inspection and copying requirements.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reenacted by the Legislature. This bill saves the exemptions from repeal by deleting the scheduled repeal date, thereby maintaining the current exempt status of the information.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect October 1, 2025.

II. Present Situation:

Florida Public Records Law

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

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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*. *See also, Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).
[3] Public records laws are found throughout the Florida Statutes.

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

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

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

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

Only the Legislature may create an exemption to public records requirements.[9] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[10] 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[11] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[12]

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[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id.*
[11] The bill may, however, contain multiple exemptions that relate to one subject.
[12] FLA. CONST. art. I, s. 24(c)

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[13] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[14] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

The Exemption

The public records exemption retained by this bill exempts from public records disclosure requirements site-specific location information held by an agency concerning threatened or endangered species, as defined in the Florida Endangered and Threatened Species Act, or concerning threatened or endangered species listed by a federal agency.[16] The exemption does not apply to the site-specific location information of animals held in captivity.[17]

When the exemption became law in 2020, the Legislature found that the harm caused by the release of site-specific location information outweighed any public benefit from the disclosure of such information. [18] The Legislature found that the exemption was a public necessity because it would:

- Reduce the risk of exposure to wildlife poachers and threats to the integrity of the site due to increased traffic to the area;
- Protect private property owners from potential trespass and related liability issues when threatened or endangered species are found on their property; and
- Encourage private property owners and researchers to share information they might be hesitant to provide if such location information were made public.[19]

Unless it is reviewed by the Legislature and saved from repeal, the exemption will be repealed on October 2, 2025.[20]

Threatened and Endangered Species

The Federal Endangered Species Act

The Endangered Species Act of 1973 (the Act) protects and conserves imperiled species and their ecosystems.[21] The Act is administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The Act requires these agencies to designate certain species

[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id*.
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 379.1026, F.S.
[17] *Id*.
[18] Chapter 2020-129, Laws of Fla.
[19] *Id*.
[20] Section 379.1026, F.S.
[21] U.S. Fish and Wildlife Service, *ESA Basics: 50 Years of Conserving Endangered Species* (Feb. 2023), 1, https://www.fws.gov/sites/default/files/documents/endangered-species-act-basics-february-2023.pdf (last visited Mar. 4, 2025).

as threatened or endangered.[22] It defines endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range"[23] and it defines a threatened species as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."[24] The term species includes both plants and animals.[25]

In evaluating whether a species should be listed under the Act, the appropriate federal agency must consider factors like the present or threatened destruction, modification, or curtailment of its habitat or range; its overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence.[26]

If a fish or wildlife species native to Florida is federally listed as threatened or endangered, it will also be designated by the Florida Fish and Wildlife Conservation Commission (FWC) as a state threatened or endangered species.[27] If a species is federally delisted, FWC has the authority to maintain that species as a state-designated species[28] and it may also independently list species as state-designated threatened or endangered species.[29]

Florida Endangered and Threatened Species Act

The Florida Endangered and Threatened Species Act defines threatened species as "any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subject to increased stress as a result of further modification of its environment."[30] It defines an endangered species as "any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence."[31]

The Florida Endangered and Threatened Species Act does not include plant species in its definitions of threatened and endangered species. State protections and listing authorizations for

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[22] 16 U.S.C. s. 1533; *see* U.S. Fish and Wildlife Service, *supra* note 21at 1.
[23] 16 U.S.C. s. 1532(6). The definition excludes "a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man." *Id*.
[24] 16 U.S.C. s. 1532(20).
[25] 16 U.S.C. s. 1532(16). Species is defined to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." *Id.*
[26] 16 U.S.C. s. 1533(a)(1). These determinations must be made only on the basis of the best scientific and commercial data available after a review of a species' status and after considering any efforts being made by other governmental entities to protect it. 16 U.S.C. s. 1533(b)(1).
[27] Rule 68A-27.0012(1), F.A.C.; Florida Fish and Wildlife Conservation Commission, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023* (Oct. 2023), 10, https://myfwc.com/media/mv4ezszl/2022-23endangeredspeciesreport.pdf (last visited Mar. 3, 2025); *see* U.S. Fish and Wildlife Service, *supra* note 21at 2.
[28] Rule 68A-27.0012(1), F.A.C.
[29] Rule 68A-27.0012(2), F.A.C. The Florida Fish and Wildlife Conservation Commission (FWC) itself may initiate evaluation of a species for listing, or it may begin the process after receiving a species evaluation request. *Id*.
[30] Section 379.2291(3)(c), F.S.
[31] Section 379.2291(3)(b), F.S.

threatened and endangered plants are found in ch. 581, F.S., which is administered by the Florida Department of Agriculture and Consumer Services.[32] Because the public records exemption applies to threatened and endangered species listed under the Florida Endangered and Threatened Species Act and species listed by a federal agency as endangered or threatened, site-specific location information on *plant* species listed only by the state[33] are not exempt from public records requests.

Site-Specific Location Information

FWC's management of threatened and endangered species includes surveying and monitoring species, improving and restoring habitat, developing management plans, conservation planning, and raising awareness.[34] Surveying and monitoring are important tools that wildlife managers use to better understand how their management actions are affecting species. Knowing the effects of management actions on a species can help managers pinpoint the actions that have led to species stabilization and conservation.[35]

The importance of surveying and monitoring means that state fish and wildlife managers are constantly collecting data showing site-specific location information on threatened and endangered species.[36] For example, FWC biologists track Florida panthers with radio collars.[37] The locations of panthers collared with VHF transmitters are monitored two times per week by aircraft, while panthers fitted with GPS-transmitting radio collars can be constantly monitored.[38] FWC and the U.S. Fish and Wildlife Service also collect location data on panthers from multiple trail camera locations.[39]

A sedated Florida panther is fitted with a radio collar to allow researchers to track this individual's movements. *Photo courtesy of FWC.*

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act (OGSR), prescribes a legislative review process for newly created or substantially amended public records or open meetings

[32] Section 581.185, F.S.; *see* s. 581.011, F.S. (defining department as "the Department of Agriculture and Consumer Services of the state or its authorized representative").
[33] For the list of plant species listed by the state, in addition to plant species listed by the federal government see Rule 5B-40.0055 F.A.C.
[34] *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, *supra* note 27 at 12.
[35] *Id*.
[36] *See, e.g.*, FWC, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, *supra* note 27 at 25-27.
[37] FWC, *Capturing Florida Panthers*, https://myfwc.com/wildlifehabitats/wildlife/panther/capture/ (last visited Jan. 2025). The photo on this page of the analysis can be found at this site.
[38] *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, *supra* note 27 at 25.
[39] *Id*.

exemptions.[40] 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 or repeal the sunset date.[41] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[42] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[43]
- 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;[44] or
- It protects trade or business secrets.[45]

The OGSR also requires specified questions to be considered during the review process.[46] 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 or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[47] If the exemption is reenacted or saved from repeal 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.[48]

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[40] Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[41] Section 119.15(3), F.S.
[42] Section 119.15(6)(b), F.S.
[43] Section 119.15(6)(b)1., F.S.
[44] Section 119.15(6)(b)2., F.S.
[45] Section 119.15(6)(b)3., F.S.
[46] 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?

[47] FLA. CONST. art. I, s. 24(c).
[48] Section 119.15(7), F.S.

Open Government Sunset Review Findings and Recommendations

FWC recommends the preservation of the public records exemption for site-specific location information on threatened and endangered species. FWC supported the exemption when it was first codified in 2020, due to concerns that public availability of the information undermined FWC's conservation efforts and hurt public trust among collaborators and stakeholders.[49]

More specifically, FWC supported the exemption because the agency was concerned with protecting private property owners enrolled in its management plan from potential trespass and related liability issues when threatened or endangered species are found on their properties.[50] FWC was also concerned that allowing the public to easily access site-specific location information would have a chilling effect on its necessary collaboration with nongovernmental organizations, universities, other management agencies, and private consultants to help make management decisions for threatened and endangered species.[51] FWC also stated that the easy availability of site-specific location information jeopardized threatened and endangered species due to an increased risk of poaching or degradation of habitat from increased use of the site.[52]

FWC has received approximately 800 public records requests for site-specific location information on 12 threatened or endangered species or species groups since fiscal year 2021-2022.[53] There have been well over 100 requests each for manatees, gopher tortoises, Cape Sable seaside sparrows, and marine turtles and over 70 requests each for Florida pine snakes, alligator snapping turtles, and Florida panthers.[54]

Citing the same concerns it had in 2020, FWC supports the continuation of the public records exemption with the passage of this bill.

III. Effect of Proposed Changes:

Section 1 removes the scheduled repeal date of the public record exemption, thereby continuing the exempt status of site-specific location information held by an agency concerning an endangered species, a threatened species, or a species listed by a federal agency as endangered or threatened.

Section 2 provides an effective date of October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

[49] FWC, *Agency Analysis of SB 812*, 2 (Dec. 2019), on file with the Senate Committee on Environment and Natural Resources.
[50] *Id*.
[51] *Id*. at 2, 3.
[52] *Id*. at 3.
[53] Email from FWC (Jan. 1, 2025), on file with the Senate Committee on Environment and Natural Resources.
[54] *Id*.

have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records disclosure requirements. This bill does not create or expand an exemption, and thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, and thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends section 379.1026 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Environment and Natural Resources

592-01941-25 20257000__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 379.1026, F.S., which provides an exemption from public records requirements for site-specific location information for endangered and threatened species; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 379.1026, Florida Statutes, is amended to read:

379.1026 Site-specific location information for endangered and threatened species; public records exemption.—The site-specific location information held by an agency as defined in s. 119.011 concerning an endangered species as defined in s. 379.2291(3)(b), a threatened species as defined in s. 379.2291(3)(c), or a species listed by a federal agency as endangered or threatened, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption does not apply to the site-specific location information of animals held in captivity. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.~~

Section 2. This act shall take effect October 1, 2025.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 7004
INTRODUCER:	Community Affairs Committee
SUBJECT:	OGSR/Applicants or Participants in Certain Federal, State, or Local Housing Assistance Programs
DATE:	March 10, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Hunter	Fleming		**CA Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Pre-meeting**
2.			RC	

I. Summary:

SB 7004 saves from repeal the current public records exemption making property photographs and personal identifying information of applicants or participants in presidentially declared disaster-related federal, state, or local housing assistance programs confidential and exempt from public records inspection and copying requirements. The exemption covers records held by the Department of Commerce, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reenacted by the Legislature. The bill saves the exemption from repeal by deleting the scheduled repeal date, thereby maintaining the confidential and exempt status of the information.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect October 1, 2025.

II. Present Situation:

Florida Public Records Law

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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*. *See also, Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

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

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

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

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

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

Only the Legislature may create an exemption to public records requirements.[9] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[10] 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[11]

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[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*.
[11] The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[12]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[13] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[14] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

Department of Commerce

The Department of Commerce (department) was created in 2011 by combining the Agency for Workforce Innovation, the Department of Community Affairs, and the Governor's Office of Tourism, Trade, and Economic Development.[16] The purpose of the department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement policies and strategies designed to promote economic opportunities for all Floridians.[17] Within the department, the Office of Long-Term Resiliency supports communities following disasters by addressing long-term recovery needs for housing, infrastructure, and economic development.[18] The department is also the state authority responsible for administering all United States Department of Housing and Urban Development (HUD) long-term disaster recovery funds awarded to the state.[19]

Florida Housing Finance Corporation

The Florida Housing Finance Corporation Act provides that the Florida Housing Finance Corporation (FHFC) is created within the Department of Commerce and is a public corporation.[20] The FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.[21]

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[12] FLA. CONST. art. I, s. 24(c)
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id.*
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] *See* ch. 2011-142, Laws of Fla.
[17] Section 20.60(4), F.S.
[18] Dep't of Commerce, *Office of Long-Term Resiliency*, https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Mar. 4, 2025).
[19] *Id.*
[20] Section 420.504(1), F.S.
[21] See sections. 420.502 and 420.507, F.S.

Local Housing Finance Agencies

Local Housing Finance Agencies (HFAs), also known as Local Housing Finance Authorities, are dependent[22] special districts of a local government. A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[23] HFAs are set up to sell bonds to finance affordable apartments, provide loans with HFA funds for gap financing, sell bonds or administer other programs to provide low-rate mortgages, and provide down payment assistance to homebuyers.[24]

Disaster Recovery Housing Assistance Programs

The Department, FHFC, counties, municipalities, and local housing finance agencies have various housing programs that are designed to assist those who have been impacted by a disaster. While counties and municipalities have broad discretion to allocate local funds and create programs that meet the disaster housing needs within their communities, the primary programs which allocate significant funds to the state and local governments for such purposes are described below.

Applicants seeking assistance from many of these programs are required to provide personal information and supporting documentation.[25] For example, damage assessment data collected during property inspections to determine remaining needed repairs may include the applicant's name, address, telephone numbers, photo identification, and interior and exterior photographs of their residence.[26] Other commonly needed personal identifying information includes, proof of home ownership, tax returns, and salary or wage statements. The Department must maintain all files containing such personally identifiable information, making them public records.[27]

Community Development Block Grant - Disaster Recovery

The primary program utilizing the public records exemption is the Community Development Block Grant - Disaster Recovery (CDBG-DR) Program administered in Florida by the Department. CDBG-DR is funded by the HUD and supports communities following disasters by addressing long-term recovery needs.[28] In response to a presidentially declared disaster, Congress may appropriate supplemental funding for the CDBG-DR Program as "grants to rebuild disaster impacted areas and provide crucial seed money to start the recovery process."[29]

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[22] A special district is classified as "dependent" if the governing body of a single county or municipality: serves as governing body of the district; appoints the governing body of the district; may remove members of the district's governing body at-will during their unexpired terms; or approves or can veto the budget of the district.
[23] See Halifax Hospital Medical Center v. State of Fla., et al., 278 So. 3d 545, 547 (Fla. 2019).
[24] Presentation to Senate Community Affairs Committee 12-1-2021 on file with Senate Community Affairs Committee.
[25] Sarasota County, *Housing Recovery Program*, available at https://www.resilientsrq.net/housing-recovery (last visited Feb. 16, 2025)
[26] Department of Commerce, *Eligibility Requirements*, available at https://ian.rebuildflorida.gov/eligibility/ (last visited Feb. 14, 2025)
[27] *Id.*
[28] Dep't of Commerce, *Office of Long-Term Resiliency*, https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Mar. 4, 2025).
[29] U.S. Department of Housing and Urban Development, *Community Development Block Grant Disaster Recovery Program*, https://www.hud.gov/program_offices/comm_planning/cdbg-dr/ (last visited Mar. 4, 2025).

These flexible grants help cities, counties, and states recover from presidentially declared disasters, especially in low-income areas.[30]

CDBG-DR funds must be used for "...necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation…."[31] The funds are intended to address unmet needs that other resources—including Federal Emergency Management (FEMA) funds or homeowner's insurance—aren't likely to address.[32] CDBG-DR funds cannot duplicate funding available from federal, state, or local governments; private and non-profit organizations; insurance proceeds; or any other source of assistance.[33] The timeframe between the occurrence of a disaster and project implementation can be lengthy and vary widely.[34] While disasters may be quickly declared—often within 1 day—congressional appropriations may not happen until a year after the declaration date.[35] The process from HUD notice publication to action plan development and approval, and through first expenditure may take months, while execution of the activity and final completion may take years.[36] For example, Hurricane Michael struck on October 10, 2018, HUD published its notice about CDBG-DR funds in the Federal Register in January of 2020, and Florida received HUD's approval of the State Action Plan in June of 2020.[37]

The Department has received more than $4.3 billion since 2017 to administer CDBG-DR and Mitigation funds to communities impacted by tropical storms and hurricanes.[38]

Rebuild Florida

Rebuild Florida is a program within the Department that focuses on distributing CDBG-DR funding to long-term recovery efforts for homeowners, small businesses, and communities after all other assistance has been exhausted, including insurance and other forms of federal assistance.[39]

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[30] *Id.*
[31] U.S. Dep't of Housing & Urban Development, *Community Development Block Grant Disaster Recovery: CDBG-DR Overview*, p. 18, https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-Disaster-Recovery-Overview.pdf (last visited Mar. 4, 2025).
[32] U.S. Dep't of Housing & Urban Development, *Fact Sheet*, https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-DR-Fact-Sheet.pdf (last visited Feb.16, 2025).
[33] *Id.*
[34] U.S. Department of Housing and Urban Development, *Housing Recovery and CDBG-DR at 10*, available at https://www.huduser.gov/portal/sites/default/files/pdf/HousingRecovery_CDBG-DR.pdf (last visited Feb. 16, 2025)
[35] *Id.* at 11-12.
[36] *Id.*
[37] Department of Commerce, *Hurricane Michael*, https://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative/hurricane-michael (last visited Feb. 16, 2025).
[38] Florida Commerce Office of Long-Term Resiliency, Dep't of Commerce, *Presentation to Senate Community Affairs Committee*, February 4, 2025, p.4, https://flsenate.gov/Committees/Show/CA/MeetingPacket/6282/10952_MeetingPacket_6282_2.pdf (last visited Mar. 4, 2025).
[39] Dep't of Commerce, *Rebuild Florida Housing Repair and Replacement Program* (Sept. 10, 2018), hhttps://www.floridajobs.org/docs/default-source/communicationsfiles/rebuild-florida-document/housing-repair-faqs.pdf?sfvrsn=4 (last visited Mar. 4, 2025).

The Rebuild Florida Housing Repair and Replacement Program (HRRP) addresses remaining unmet housing recovery needs through the repair, rebuild or replacement of damaged homes.[40] CDBG-DR and Rebuild Florida also fund rebuild and repair programs through local governments, either directly from HUD[41] or through the department. The program offers reconstruction, manufactured housing unit replacement, or rehabilitation with a priority on the most vulnerable populations, including the elderly, those with disabilities, families with children under the age of 18, and families with low household incomes.[42] The HRRP program manages complete construction on behalf of eligible and awarded homeowners, but payments are not made to the property owner directly. Contractors are selected by the state as a subrecipient of the HUD funding, and homeowners do not directly select or contact the chosen builder.[43]

Applicants seeking assistance from the Department of Commerce's Rebuild Florida, CDBG-DR funded programs or local rebuild and repair programs, are required to provide personal information and supporting documentation. Applications may be received by the department or the local government.[44] For example, damage assessment data collected during property inspections to determine remaining needed repairs may include the applicant's name, address, telephone numbers, photo identification, and interior and exterior photographs of their residence.[45] Other commonly needed personal identifying information includes, proof of home ownership, tax returns, and salary or wage statements. The department maintains all files containing such personally identifiable information in a secure manner.[46]

Rebuild Florida currently has open programs on their website for hurricanes Irma, Michael, and Hurricane Ian, and has forthcoming programs to support those affected by the 2023-2024 storms.[47]

The State Housing Initiatives Partnership

The State Housing Initiatives Partnership (SHIP) Program was created in 1992.[48] Currently, all 67 counties and 52 municipalities receive funding through the Community Development Block Grant program administered by the SHIP.[49] Many local government's SHIP programs offer recovery assistance to help those affected by disasters with temporary relocation, rental assistance, mortgage foreclosure prevention, security and utility deposit assistance, debris

[40] *Cf* Departm't of Commerce, *Recovery FAQ for Hurricane Ian*, available at https://ian.rebuildflorida.gov/resources/frequently-asked-questions/ (last visited Feb. 14Mar. 4, 2025)
[41] HUD allocated $201.5 million to Sarasota County through CDBG-DR, $55 million of which was to provide decent, safe, and sanitary housing for residents affected by Hurricane Ian.
[42] *Id*.
[43] *Id*.
[44] Sarasota County, *Housing Recovery Program*, available at https://www.resilientsrq.net/housing-recovery (last visited Feb. 16, 2025)
[45] Department of Commerce, *Eligibility Requirements*, available at https://ian.rebuildflorida.gov/eligibility/ (last visited Feb. 14, 2025)
[46] *Id.*
[47] *Id*.
[48] Chapter 92-317, Laws of Fla.
[49] Section 420.072(7), F.S.

removal and home repairs.[50] Examples include Leon County and Osceola County who have leveraged SHIP funds for these disaster recovery related activities.[51] Moreover, the Florida Housing Finance Corporation may hold up to $5 million each fiscal year from the SHIP Program appropriation for recovery efforts for declared disasters.[52] These funds have been utilized for disaster recovery efforts that include response to hurricanes, tornadoes, flooding, and wildfires.

The Robert T. Stafford Disaster Relief Act and a Presidential Disaster Declaration

Congress enacted the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act")[53] to provide an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters.[54] Under the Stafford Act, governors request the President for a declaration of a major disaster or an emergency and funds become available if the President does so.[55] The President's declaration designates the areas that may receive federal assistance and what specific types of assistance that can be.

Between 2022 and 2024, the President declared disasters in Florida following hurricanes Milton, Helene, Idalia, Ian, and Nicole.[56]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[57] (the Act), prescribe a legislative review process for newly created or substantially amended[58] public records or open meetings exemptions, with specified exceptions.[59] The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[60]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[61]

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[50] Florida Housing, *Disaster Relief Resources and Information, available at* https://www.floridahousing.org/programs/special-programs/ship---state-housing-initiatives-partnership-program/disaster-relief (last visited Feb. 16, 2025)
[51] Leon County, *TEAM Leon Individual Assistance Program*, https://cms.leoncountyfl.gov/Government/Departments/Human-Services-Community-Partnerships/TEAM-Leon/TEAM-Leon-Individuals, (last visited Mar. 4, 2025); Osceola County, *State Housing Initiatives Partnership (SHIP) Program*, https://www.osceola.org/Services/Housing-Programs/SHIP (last visited Mar. 4, 2025).
[52] Section 420.9073(5), F.S.
[53] 42 U.S.C. ss. 5121, *et seq.*
[54] 42 U.S.C. s. 5121(b).
[55] 42 U.S.C. ss. 5170 and 5191.
[56] Federal Emergency Management Agency, U.S. Dep't of Homeland Security, *Disasters and Other Declarations*, https://www.fema.gov/disaster/declarations, (last visited Mar. 4, 2025)
[57] Section 119.15, F.S.
[58] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[59] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[60] Section 119.15(3), F.S.
[61] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[62]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[63] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[64]

The Act also requires specified questions to be considered during the review process.[65] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.[66] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[67]

Open Government Sunset Review Findings and Recommendations

The Department recommends the preservation of the public records exemption for records relating to property photographs and personal identifying information of applicants or participants in disaster-related federal, state, or local housing assistance programs. The Department cites the necessity of the exemption, providing that the information obtained in administering these programs to disaster affected Floridians "could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed homeowner or tenant following a disaster."[68]

[62] Section 119.15(6)(b)1., F.S.
[63] Section 119.15(6)(b)2., F.S.
[64] Section 119.15(6)(b)3., F.S.
[65] 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?

[66] *See generally* s. 119.15, F.S.
[67] Section 119.15(7), F.S.
[68] Florida Commerce, *Agency Analysis of SB 966*, (Dec. 2019), on file with the Senate Committee on Community Affairs.

Additionally, the Senate Community Affairs Committee and House Local Administration, Federal Affairs & Special Districts Subcommittee surveyed local governments in regard to the exemption. Of the respondents who provided a recommendation, the overwhelming majority supported reenacting the public records exemption 'as is.'[69] Only two local governments statewide recommended repealing the exemption, and those responses indicated non-use as a factor.[70]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(5)(f), F.S., to remove the scheduled repeal date of the public records exemption, thereby continuing the confidential and exempt status of the property photographs and personal identifying information of applicants or participants in disaster-related federal, state, or local housing assistance programs held by the Department of Commerce, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency.

Section 2 provides an effective date of October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records disclosure requirements. This bill does not create or expand an exemption, and thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption and thus, a statement of public necessity is not required.

[69] Survey of local governments on file with the Senate Committee on Community Affairs.
[70] The municipalities of Shalimar and Longboat Key both indicated support for repealing the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Community Affairs

578-01999-25 20257004__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for property photographs and personal identifying information of applicants for or participants in certain federal, state, or local housing assistance programs; deleting the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (f) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

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

(5) OTHER PERSONAL INFORMATION.—

(f)1. The following information held by the Department of Commerce, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Medical history records and information related to health or property insurance provided by an applicant for or a participant in a federal, state, or local housing assistance program.

b. Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of

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disaster recovery assistance for a presidentially declared disaster.

2. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs.

3. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

~~4. Sub-subparagraph 1.b. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2025.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 7006
INTRODUCER:	Regulated Industries Committee
SUBJECT:	Public Records and Meetings/NG911 Systems
DATE:	March 10, 2025 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Schrader	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Pre-meeting**
2.			RC	

I. Summary:

SB 7006 saves from repeal the current public records exemptions for the following information:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennas, equipment, or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency.[1]
- Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennas, equipment or facilities used to provide 911, E911, or public safety radio services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency.

The bill also saves from repeal a public meeting exemption in s. 286.0113(4), F.S., for any portion of a meeting that would reveal the above information, as well as a public record exemption for any recordings or transcripts of the exempt meetings.

The bill also expands the public records exemption and public meeting exemption by adding information relating to Next Generation 911 (NG911) systems to the information protected from disclosure.

The exemptions are required to protect 911, E911, NG911, or public safety radio communication services to ensure the security of emergency communication infrastructure, structures, and

[1] Section 119.011(2), F.S., defines an "agency," under Florida's public records law in ch. 119, F.S., to include "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."

facilities. Any disruption to 911, E911, NG911, or public safety radio communication services during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennas supporting these systems need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities, and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning and execution of criminal actions, including cybercrime, arson, and terrorism.

The Open Government Sunset Review Act requires the Legislature to review each public record and public meeting exemption 5 years after enactment. These exemptions are scheduled to repeal on October 2, 2025. The bill modifies the scheduled repeals and delays them to October 2, 2030.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[2] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[3]

Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that:

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

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

The Public Records Act does not apply to legislative or judicial records.[6] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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[2] FLA. CONST. art. I, s. 24(a).
[3] *Id*.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[7] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[8]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.[11] The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[12] A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.[13]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[14] Records designated "confidential and exempt" may be released by the records custodian only under the circumstances defined by statutory exemptions. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

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

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

[9] Section 119.07(1)(a), F.S.

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

[11] FLA. CONST. art. I, s. 24(c).

[12] *Id*.

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

[14] 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).

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

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[16] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[17] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[18]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law"[19] or the "Sunshine Law,"[20] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[21] The board or commission must provide the public reasonable notice of such meetings.[22] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[23] Minutes of a public meeting must be promptly recorded and open to public inspection.[24] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[25] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[26]

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[27] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[28] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[29]

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act (OGSR), prescribes a legislative review process for newly created or substantially amended public records or open meetings

[16] FLA. CONST., art. I, s. 24(b).
[17] *Id*.
[18] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all 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 formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[19] *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).
[20] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).
[21] Section 286.011(1)-(2), F.S.
[22] *Id*.
[23] Section 286.011(6), F.S.
[24] Section 286.011(2), F.S.
[25] Section 286.011(1), F.S.
[26] Section 286.011(3), F.S.
[27] FLA. CONST., art. I, s. 24(c).
[28] *Id*.
[29] *See supra* note 13.

exemptions.[30] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or a substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.[31] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[32] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[33]
- 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;[34] or
- It protects trade or business secrets.[35]

The OGSR also requires specified questions to be considered during the review process.[36] 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 or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[37] If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[38]

Florida 911 System

Since 1973, the state of Florida, in conjunction with Florida's counties, has funded technological advancements in statewide emergency number systems (i.e., 911 systems) for emergency communications between citizens and visitors and emergency services. Basic 911 service was

[30] Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[31] Section 119.15(3), F.S.
[32] Section 119.15(6)(b), F.S.
[33] Section 119.15(6)(b)1., F.S.
[34] Section 119.15(6)(b)2., F.S.
[35] Section 119.15(6)(b)3., F.S.
[36] 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?

[37] FLA. CONST. art. I, s. 24(c).
[38] Section 119.15(7), F.S.

established statewide in 1997. In 2005, wireline enhanced 911 (E911) service was implemented in all of Florida's 67 counties to obtain a 911 caller's telephone number and address. In 2007, Florida's wireless 911 board transitioned to the E911 Board with the intent of implementing enhanced 911 services. Phase I of the enhanced services provided call back numbers and the location of cell sites utilized for making the call into 911; Phase II provided location information for the actual cellular caller. These enhancements were completed March 31, 2008.[39] Currently, Florida's counties are working on technical, funding, and deployment issues in an effort to provide statewide text-to-911 services. As of February 2025, 64 of Florida's 67 counties offer text-to-911 service.[40]

2023 Revisions to Florida's Emergency Communications Law

In 2023, Florida passed SB 1418 which made several changes to Florida's Emergency Communications Law to reflect the transition from E911 to Next Generation 911 (NG911), and to revise legislative intent regarding such services and the composition, name, duties, and meeting frequency of the current E911 Board (renamed in the bill to be the Emergency Communications Board (EC Board).[41] Under the bill, the EC Board was given the additional responsibility of advocating and developing policy recommendations to ensure interoperability and connectivity between public safety communication systems within the state. The EC Board was also authorized, under the bill, to establish a schedule for implementing NG911 systems, public safety radio communications systems, and other public safety communications improvements. The EC Board may prioritize disbursement of revenues pursuant to this schedule to implement 911 services in the most efficient and cost-effective manner.

The bill also revised the distribution of revenue collected from a monthly fee to fund 911 services assessed on voice communications services in the state, removed county exceptions to the state's uniform rate for this fee, and revised the expenditures that are eligible to be paid by revenue collected from this fee. The EC Board was directed to ensure that county recipients of funds only use such funds for the purposes for which they have been provided. If the EC Board determines such funds were not used for the purposes for which they were provided, the EC Board is authorized to secure county repayment of improperly used funds. Changes, modifications, or upgrades to the emergency communications systems or services must be made in cooperation with the head of each law enforcement agency served by the primary Public Safety Answering Point (PSAP) in each county.

The bill also required the Department of Management Services Division of Telecommunications to develop a plan by December 30, 2023, to upgrade 911 PSAPs within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state by December 30, 2033.

[39] Dep't of Management Services, *Florida 911*, https://www.dms.myflorida.com/business_operations/telecommunications/public_safety_communications/florida_911 (last visited Mar. 4, 2025).
[40] Dep't of Management Services, *Florida Text-to-911 Status (by county)*, https://www.arcgis.com/apps/dashboards/3a78afa830ca4b40bb8adb6ac0c45b25 (last visited Mar. 4, 2025).
[41] Chapter 2023-55, Laws of Fla.

Public Record and Public Meeting Exemptions Related to Security and Firesafety

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security and Firesafety Plan

Section 119.071(3)(a)1., F.S., defines a "security or firesafety plan" to include:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems;
- Threat assessments conducted by any agency[42] or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; and
- Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

A security or firesafety plan or any portion thereof that is held by an agency is confidential and exempt from public record requirements if the plan is for any property owned by or leased to the state, any of its political subdivisions, or any private entity or individual.[43] An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.[44]

Any portion of a meeting that would reveal a security or firesafety system plan or portion thereof is also exempt from public meetings requirements.[45]

Building Plans, Blueprints, Schematic Drawings and Diagrams

Section 119.071(3)(b)1., F.S., makes confidential and exempt from public record requirements building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency.

This information may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

[42] *Supra* note 1.
[43] Section 119.071(3)(a)2., F.S.
[44] Section 119.071(3)(a)3., F.S.
[45] Section 286.0113(1), F.S.

- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.[46]

The entities or persons receiving such information must maintain the exempt status of the information.[47]

Section 119.071(3)(c)1., F.S., makes confidential and exempt from public record requirements building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development.[48] Section 119.071(3)(c)3., F.S., specifies that this exemption does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

Information relating to the Nationwide Public Safety Broadband Network

Section 119.071(3)(d), F.S., makes confidential and exempt from public records requirements information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq., held by an agency if the release would reveal:

- The design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of network infrastructure and facilities;
- The features, functions, and capabilities of network services provided to first responders, as defined in s. 112.1815, F.S., and other network users;
- The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

Specific Cybersecurity Public Record and Public Meeting Exemptions

In 2022, the Legislature enacted s. 119.0725(3), F.S.,[49] to create a new public records exemption, applicable to all agencies, for certain information relating to cybersecurity. Specifically, the following information is made confidential and exempt from public inspection and copying requirements:

[46] Section 119.071(3)(b)3., F.S.
[47] Section 119.071(3)(b)4., F.S.
[48] This paragraph provides definitions for "attractions and recreation facility," "entertainment or resort complex," "Industrial complex," "retail and service development," "office development," "health care facility," "hotel or motel development." *See* s. 119.071(3)(c)5., F.S.
[49] Chapter 2022-221, Laws of Fla.

- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency.
- Information related to critical infrastructure.[50]
- Cybersecurity incident information contained in certain reports.
- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
  - Data or information, whether physical or virtual; or
  - Information technology resources, which include an agency's existing or proposed information technology systems.

Section 119.0725(3), F.S., also creates a public meeting exemption for any portion of a meeting that would reveal the information made confidential and exempt pursuant to s. 119.0725(2), F.S.; however, any portion of an exempt meeting must be recorded and transcribed. The recording and transcript are confidential and exempt from public record inspection and copying requirements.

The exemptions codified in s. 119.0725, F.S., stand repealed on October 2, 2027, unless reviewed and saved from repeal by reenactment by the legislature.

Public Record and Meeting Exemptions Specific to 911, E911, and Public Safety Radio Communications Systems

In 2020, the Legislature created public record exemptions in s. 119.071(3)(e), F.S., for the following information:[51]

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment, or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency.
- Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment, or facilities used to provide 911, E911, or public safety radio services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency.

Also, in 2020, the Legislature created a public meeting exemption in s. 286.0113(4), F.S.,[52] for any portion of a meeting that would reveal the above information, as well as a public record exemption for any recordings or transcripts of the exempt meetings.

[50] "Critical infrastructure" means existing and proposed information technology and operation technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. *See* s. 119.0725(1)(b), F.S.
[51] Chapter 2020-13, Laws of Fla.
[52] *Id.*

In expressing the need for the above public records and public meetings exemptions, the bill's public necessity statements cited to:

- The need to ensure the security of emergency communication infrastructure, structures, and facilities;
- 911, E911, and public safety radio communication facilities, including towers and antennae, being a vital link in the chain of survival;
- The need that such critical infrastructure be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage;
- The need for towers and antennae to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities, and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities; and
- Information contained in these documents could aid in the planning of and execution of criminal actions, including cybercrime, arson, and terrorism.

The public record and public meeting exemptions stand repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act.

Open Government Sunset Review Findings and Recommendations

Staff of the Senate Committee on Regulated Industries and the House of Representatives Ethics, Elections & Open Government Subcommittee[53] jointly developed a survey requesting that operators review and provide feedback on the public records exception in s. 119.071(3)(e), F.S., and the public meetings exception in s. 286.0113(4), F.S. These surveys were provided to the Florida's counties, law enforcement agencies, and 911 dispatchers.

Staff of the Senate Committee on Regulated Industries received a total of 54 responses to this survey. Of the 54 responses, 49 respondents provided feedback regarding the public records exemption in s. 119.071(3)(e), F.S., and 42 of those selected that the paragraph be reenacted "as is." Seven respondents suggested that the paragraph be reenacted with changes. Similarly, of the 46 respondents providing feedback regarding the public meetings exception in s. 286.0113(4), F.S., 41 responded that the subsection be reenacted "as is." Five respondents suggested that the paragraph be reenacted with changes.

The changes suggested by the respondents included adding NG911 revisions, data obtained from 911 calls and operations, software applications, and technological components of the public safety communications system to the exemption.

Respondents also noted some additional areas of potential overlap of protection with s. 119.071(3)(e), F.S., which include:

- The Federal Wireless Communications and Public Safety Act of 1999;

[53] Renamed the Government Operations Subcommittee by House Rule 7.1(a)(8)a.

- Rules of the Public Safety and Homeland Security Bureau;
- The Federal Communications Commission's rules on E911;
- Section 119.071(3)(a), F.S., which provides exemptions for security and firesafety system plans;
- Section 119.071(3)(b), F.S., which provides exemptions for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency;
- Section 119.071(2), F.S., which provides exemptions for agency investigations;
- Section 119.0725, F.S., which provides exemptions for specified cybersecurity risks;
- Section 365.171, F.S., which provides exemptions for records, recordings, or information obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency; and
- Article 1, section 16 (b)-(e) of the State Constitution (also known as Marsy's Law).

However, the respondents appear to believe these compliment the exemptions under review, but do not replace the need for the exemption.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3)(e), F.S., to expand the exemption from public records disclosure requirements to include information relating to Next Generation 911 (NG911) systems, and to delay the scheduled repeal date of the current public records exemptions for the following information:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment, or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency.[54]
- Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment, or facilities used to provide 911, E911, or public safety radio services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency.

The scheduled date of repeal of the exemption is delayed to October 2, 2030.

Section 2 amends s. 286.0113(4), F.S., to revise the scheduled repeal of a public meeting exemption for any portion of a meeting that would reveal the above information, as well as a public records exemption for any recordings or transcripts of the exempt meetings. The scheduled date of repeal of the section is delayed to October 2, 2030.

The section also expands the exemption to include Next Generation 911 (NG911) systems.

[54] *Supra* note 1.

Section 3 provides a statement of public necessity as required by article I, section 24(c) of the State Constitution, stating that such protections are necessary to ensure the security of emergency communication infrastructure, structures, and facilities—this includes the NG911 system.

Section 4 provides that the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does expand an exemption; thus, the bill does require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does expand an exemption; thus, a statement of public necessity is required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends sections 119.071 and 286.0113 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Regulated Industries

580-02002A-25 20257006__

A bill to be entitled

An act relating to public records and meetings; amending s. 119.071, F.S.; expanding an exemption from public records requirements for certain components of 911, E911, and public safety radio communication systems to include NG911 systems; extending the date for future legislative review and repeal of the exemption; amending s. 286.0113, F.S.; expanding an exemption from public meetings requirements for certain portions of meetings that would reveal certain components of 911, E911, and public safety radio communication systems to include NG911 systems; extending the date for future legislative 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. Paragraph (e) of subsection (3) of section 119.071, Florida Statutes, is amended to read:

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

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, NG911, or public safety radio communication system infrastructure, including towers, antennas ~~antennae~~, equipment or facilities used to provide 911, E911, NG911, or public safety radio communication

services, or other 911, E911, NG911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911, E911, NG911, or public safety radio communication system infrastructure, including towers, antennas ~~antennae~~, equipment or facilities used to provide 911, E911, NG911, or public safety radio services, or other 911, E911, NG911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, NG911, or public safety radio communication system infrastructure or other 911, E911, NG911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911, E911, NG911, or public safety radio communication system infrastructure or other 911, E911, NG911, or public safety radio communication structures or facilities owned and operated by an agency, before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the 911, E911, NG911, or public safety radio communication system infrastructure, including towers, antennas ~~antennae~~, equipment or facilities used to provide 911, E911, NG911, or public safety radio communication services, or other 911, E911, NG911, or public safety radio communication structures or facilities owned and operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information must maintain the exempt status of the information.

5. For purposes of this paragraph, the term "public safety radio" is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. part 90 for public safety purposes.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2030 ~~2025~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (4) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, NG911, or public safety radio

communication system infrastructure, including towers, antennas ~~antennae~~, equipment or facilities used to provide 911, E911, NG911, or public safety radio communication services, or other 911, E911, NG911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, NG911, or public safety radio communication system infrastructure, including towers, antennas ~~antennae~~, equipment or facilities used to provide 911, E911, NG911, or public safety radio communication services, or other 911, E911, NG911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraph (a) or paragraph (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, the term "public safety radio" is defined as the means of communication between

and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. part 90 for public safety purposes.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2030 ~~2025~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, NG911, or public safety radio communication system infrastructure, including towers, antennas, equipment, or facilities used to provide 911, E911, NG911, or public safety radio communication services, and other 911, E911, NG911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating the actual or proposed locations of such communication system infrastructure, structures, or facilities be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the security of emergency communication infrastructure, structures, and facilities. The Legislature finds that it is a public necessity that any portion of a meeting revealing such documents and maps held by an agency be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, received and held by counties,

municipalities, and other governmental agencies which depict the structural elements of 911, E911, NG911, or public safety radio communication system infrastructure, structures, and facilities are currently subject to release as public records upon request. Similarly, geographical maps showing the present or proposed locations of such 911, E911, NG911, or public safety radio communication system infrastructure, structures, and facilities which are in the possession of counties, municipalities, and other governmental agencies are also subject to release as public records upon request. Counties, municipalities, and other governmental agencies may review the building plans or geographical maps to ensure compliance with land development regulations, building codes, agency rules, and standards to protect the public health and safety. These building plans include diagrams and schematic drawings of emergency communication systems, electrical systems, and other physical plant and security details which depict the structural elements of such emergency communications facilities and structures. Such 911, E911, NG911, and public safety radio communication facilities, including towers and antennas, are a vital link in the chain of survival. This critical infrastructure must be protected because any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennas need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities, and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas,

these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning of, training for, and execution of criminal actions, including cybercrime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records and public meetings requirements to reduce exposure to security threats and to protect the public.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 924
INTRODUCER:	Senator Calatayud
SUBJECT:	Coverage for Fertility Preservation Services
DATE:	March 10, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney	GO	**Pre-meeting**
2.			BI	
3.			AP	

I. Summary:

SB 924 requires all contracted state group health insurance plans issued on or after January 1, 2026, to cover and pay for standard fertility preservation services for individuals undergoing medically necessary treatments that may result in iatrogenic infertility. The bill prohibits a state group health insurance plan from imposing any preauthorization requirements.

The bill likely has a negative impact on state revenues and expenditures. The Division of State Group Insurance within the Department of Management Services estimates an annual fiscal impact of $813,000 to the state employee group health plan.

The bill provides an effective date of July 1, 2025.

II. Present Situation:

Medical Treatments and Conditions Effecting Fertility

Infertility can be caused by many different things.[1] Numerous medical treatments may affect fertility or cause infertility in men and women; additionally, some individuals face potential infertility due to different medical conditions.

Men and women's fertility can be negatively impacted by necessary surgeries that cause damage or scaring, or that remove certain necessary reproductive organs or tissues. Medications have also been linked to infertility, such as those used to treat certain anti-inflammatory and autoimmune diseases, some steroids, and other various prescription drugs.[2]

[1] National Health Services, *Infertility: Causes*, https://www.nhs.uk/conditions/infertility/causes/ (last visited Mar. 5, 2025).
[2] National Health Services, *Infertility: Causes*, *supra* n. 1; James F. Buchanan & Larry Jay Davis, *Drug-induced infertility*, 18(2) DRUG INTELL CLIN PHARM. 122, available at https://pubmed.ncbi.nlm.nih.gov/6141923/ (last visited Mar. 5, 2025).

Cancer Specific

Infertility is often a side effect of life-saving cancer treatments like chemotherapy and radiation. Moreover, surgeries necessary to remove cancerous tissues and other cancer treating medications, such as hormone therapies, can affect a patient's fertility. The effects can be temporary or permanent. The likelihood that cancer treatment will harm fertility depends on the type and stage of cancer, the type of cancer treatment, and age at the time of treatment.[3]

Fertility Preservation Services

Fertility preservation is the practice of proactively helping patients to preserve their chances for future reproduction.[4] Fertility preservation saves and protects embryos, eggs, sperm, and reproductive tissues to enable an individual to have a child sometime in the future. It is an option for adults and even some children of both sexes. Fertility preservation is common in people whose fertility is compromised due to health conditions or diseases (medically indicated preservation) or when someone wishes to delay having children for personal reasons (elective preservation).[5] Medically indicative preservation is available to individuals affected by cancer, autoimmune disease, and other reproductive health conditions; as well as those facing medical treatments that may cause infertility.[6]

State Employee Health Plan

For state employees who participate in the state employee benefit program, the Department of Management Services (DMS) through the Division of State Group Insurance (DSGI) administers the state group health insurance program (program).[7] The program is a cafeteria plan managed consistent with section 125 of the Internal Revenue Service Code.[8] The program is an optional benefit for most state employees employed by state agencies, state universities, the court system, and the Legislature. The program provides health, life, dental, vision, disability, and other supplemental insurance benefits. To administer the program, DSGI contracts with third party administrators for self-insured plans, a fully insured HMO, and a pharmacy benefits manager for the state employees' self-insured prescription drug program, pursuant to s. 110.12315, F.S. The DSGI, with prior approval by the Legislature, is responsible for determining the health benefits provided and the contributions to be required for the program.[9] To achieve the "prior approval"

[3] Mayo Clinic Staff, *Fertility preservation: Understand your options before cancer treatment*, https://www.mayoclinic.org/healthy-lifestyle/getting-pregnant/in-depth/fertility-preservation/art-20047512 (last visited Mar. 5, 2025).
[4] Yale Medicine, *Fertility Preservation*, https://www.yalemedicine.org/conditions/fertility-preservation (last visited Mar. 5, 2025).
[5] Cleveland Clinic, *Fertility Preservation*, https://my.clevelandclinic.org/health/treatments/17000-fertility-preservation (last visited Mar. 5, 2025).
[6] *Id.*; Mayo Clinic, *Fertility Preservation: Understand your options before cancer treatment*, https://www.mayoclinic.org/healthy-lifestyle/getting-pregnant/in-depth/fertility-preservation/art-20047512 (last visited Mar. 5, 2025).
[7] Section 110.123, F.S; Department of Management Services, Division of State Group Insurance, *Legislative and Policy Resources*, https://www.dms.myflorida.com/workforce_operations/state_group_insurance/legislative_and_policy_resources (last visited Mar. 7, 2025).
[8] A section 125 cafeteria plan is a type of employer offered, flexible health insurance plan that provides employees a menu of pre-tax and taxable qualified benefits to choose from, but employees must be offered at least one taxable benefit such as cash, and one qualified benefit, such as a Health Savings Account.
[9] Section 110.123(5)(a), F.S.

aspect, the Legislature directs the benefits to be offered each year in the general appropriations act. For example, in the 2024-2025 General Appropriations Act, the Legislature directed:

> For the period July 1, 2024, through June 30,2025, the benefits provided under each of the plans shall be those benefits as provided in the current State Employees' PPO Plan Group Health Insurance Plan Booklet and Benefit Document, and current Health Maintenance Organization contracts and benefit documents, including any revisions to such health benefits approved by the Legislature.[10]

Health Insurance Premiums and Revenues

The health insurance benefit for active employees has premium rates for single, spouse program,[11] or family coverage regardless of plan selection. These premiums cover both medical and pharmacy claims. Over 193,000 active and retired state employees and officers are expected to participate in the health insurance program during Fiscal Year 2025-2026.[12] The estimated total revenues expected for FY 2024-25 is over $3.75 billion with an over $4.1 billion expected cash balance. Total expenses expected for FY 2024-25 is $3.9 billion.[13]

III. Effect of Proposed Changes:

Section 1 amends 110.12303, F.S., to expand coverage under the state employee health insurance plan for policies issued on or after January 1, 2026, to include coverage for standard fertility preservation services where medically necessary treatment may cause iatrogenic infertility.

Iatrogenic infertility is defined as the impairment of fertility directly or indirectly caused by surgery, chemotherapy, radiation, or other medical treatment. Standard fertility preservation services is defined as oocyte and sperm preservation procedures and includes the cost of storing such material for up to three years.

This new coverage extends to covered individuals who have been diagnosed with cancer for which necessary cancer treatment may directly or indirectly cause iatrogenic infertility and who are within a reproductive age range established by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.[14]

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[10] Chapter 2024-231, s. 8(3)(c)2, Laws of Fla.
[11] The Spouse Program provides discounted rates for family coverage when both spouses work for the state.
[12] Florida Legislature, Office of Economic and Demographic Research, State Employees' Group Health Self-Insurance Trust Fund: Exhibit I Enrollment Outlook by Fiscal Year, *in* JULY AND AUGUST 2024 SELF-INSURANCE ESTIMATING CONFERENCE PUBLICATIONS (published by Florida Legislature, Office of Economic and Demographic Research), 2, available at https://edr.state.fl.us/content/conferences/healthinsurance/archives/240807healthins.pdf (last visited Mar. 7, 2024).
[13] Florida Dep't of Management Services, Division of State Group Insurance, State Employees' Group Health Self-Insurance Trust Fund Report on Financial Outlook for the Fiscal Years Ending June 30, 3034 through June 30, 3029 (Aug. 7, 2024), *in* JULY AND AUGUST 2024 SELF-INSURANCE ESTIMATING CONFERENCE PUBLICATIONS (published by Florida Legislature, Office of Economic and Demographic Research), 8, available at https://edr.state.fl.us/content/conferences/healthinsurance/archives/240807healthins.pdf (last visited Mar. 7, 2024) (beginning on page 48 of collection).
[14] *But see* VI. Technical Deficiencies *infra*.

The bill prohibits state group health insurance plans from requiring preauthorization for coverage of standard fertility preservation procedures. The coverage, however, may still be limited by provisions relating to maximum benefits, deductibles, copayments, and coinsurance.

Section 2 provides that the bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

The inclusion of coverage for fertility preservation services with cost sharing restrictions may positively impact physicians who likely will see an increased demand for their services as well as collateral and ancillary medical supports such as medical facilities that would store oocytes and sperm.

Most of the plans contracted with can implement this legislation without issue as they currently offer standard fertility preservation options for other entities. One contracted group indicated that this would be a new benefit that could require system coding.[15]

C. Government Sector Impact:

The bill has a negative impact on state revenue and expenditures. The DSGI within the DMS administers the Program. The DMS estimates the total annual fiscal impact as $813,000. Actual costs could, however, vary widely based on actual member utilization and the necessary level of utilization.[16]

VI. Technical Deficiencies:

Class of Patients Eligible for Covered Services

The bill directs DMS to provide coverage for standard fertility preservation services when a medically necessary treatment may directly or indirectly cause iatrogenic infertility. This appears to mean any treatment – for cancer or any other condition. The bill says this new covered service "extends to covered individuals who have been diagnosed with cancer … and who are within reproductive age." The limitation regarding reproductive age does not appear to apply to patients who have not been diagnosed with cancer. With these ambiguities, the bill should be modified to clearly address whether the new covered services must be available to all patients, regardless of underlying diagnosis and its treatment, and whether the reproductive age limitation applies to any or all of the covered patients.

Line 29 limits the coverage to individuals "who are within reproductive age." Lines 48 to 51 define reproductive age to conform to the age range established by the American Society of Clinical Oncology or the American Society for Reproductive Medicine. The American Society of Clinical Oncology defines reproductive age as 18 to 40 years of age for women, and 18 to 50 years of age for men. The American Society for Reproductive Medicine does not have a clear age range of what reproductive age includes but does discuss different classes of fertility for women based on age, including qualifications starting at age 35. The use and subsequent definition of the term reproductive age may be both unnecessary and internally conflicting. Moreover, the term could lead to unintended consequences, such as excluding individuals and causing disparate impact on men and women.

Covered Storage Services

At lines 30-33, the bill provides that standard fertility preservation services include the costs associated with storing oocytes and sperm for up to 3 years. The bill also defines, at lines 52-57, standard fertility preservation services to include oocyte and sperm preservation procedures that are consistent with established medical practices or professional guidelines. This limitation is not included in lines 30-33. It is therefore unclear whether the medical standards required in lines 52-57 apply to the storage services.

[15] Dep't of Management Services, *Senate Bill 924 Analysis* (Mar. 7, 2025) (on file with the Senate Committee on Government Oversight and Accountability).
[16] *Id.*

Additionally, the 3-year time limitation on the storage of material may be ambiguous. It is unclear whether the 3-year clock begins at commencement of the standard fertility preservation service, once the oocytes or sperm are ready for storage, or some other period. It is unclear if the state health insurance plan must continue coverage of costs after an individual leaves the health insurance plan, whether through finding another job, no longer being able to work, or death or a change in insurance plan. It is also unclear whether coverage for the storage services continues if the covered individual ages out of "reproductive age" before the 3-year period ends.

Differing Organizational Definition and Standards

At numerous times the bill defers the definitions or standards relevant to those used by the "American Society of Clinical Oncology or the American Society for Reproductive Medicine." These groups' definitions and standards may differ and therefore may result in inconsistent application of the law.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends section 110.12303 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

839076

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Governmental Oversight and Accountability (Calatayud) recommended the following:

Senate Amendment

Delete lines 26 - 57
and insert:
infertility.
(b) Coverage of standard fertility preservation services under this subsection includes the costs associated with preserving sperm and oocyte materials which are consistent with nationally recognized clinical practice guidelines and definitions. Coverage of storage expires after a period of 3

839076

years from the date of the procedures presenting a risk of iatrogenic infertility or when the individual is no longer covered under the state group health insurance plan, whichever occurs first.

(c) A state group health insurance plan may not require preauthorization for coverage of standard fertility preservation services; however, a health benefit plan may contain provisions for maximum benefits and may subject the covered service to the same deductible, copayment, and coinsurance.

(d) As used in this subsection, the term:

1. "Iatrogenic infertility" means an impairment of fertility caused directly or indirectly by surgery, chemotherapy, radiation, or other medically necessary treatment with a potential side effect of impaired fertility as established by the American Society for Reproductive Medicine.

2. "Nationally recognized clinical practice guidelines and definitions" mean evidence-based clinical practice guidelines developed by independent organizations or medical professional societies using a transparent methodology and reporting structure and with a conflict-of-interest policy, and definitions used or established in said guidelines. Guidelines developed by such organizations or societies must establish standards of care informed by a systematic review of evidence and an assessment of the benefits and costs of alternative care options and include recommendations intended to optimize patient care.

3. "Standard fertility preservation services" means oocyte and sperm preservation procedures and storage, including ovarian tissue, sperm, and oocyte cryopreservation, which are consistent

839076

with nationally recognized clinical practice guidelines and definitions.

By Senator Calatayud

38-01270-25 2025924__

A bill to be entitled

An act relating to coverage for fertility preservation services; amending s. 110.12303, F.S.; requiring the Department of Management Services to provide coverage of certain fertility preservation services for state group health insurance plan policies issued on or after a specified date; specifying requirements and limitations regarding such coverage; prohibiting a state group health insurance plan from requiring preauthorization for certain covered services; authorizing health benefit plans to contain certain provisions under specified conditions; defining terms; providing an effective date.

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

Section 1. Subsection (7) is added to section 110.12303, Florida Statutes, to read:

110.12303 State group insurance program; additional benefits; price transparency program; reporting.—

(7)(a) For state group health insurance plan policies issued on or after January 1, 2026, the department shall provide coverage of medically necessary expenses relating to standard fertility preservation services when a medically necessary treatment may directly or indirectly cause iatrogenic infertility. Coverage under this section extends to covered individuals who have been diagnosed with cancer for which necessary cancer treatment may directly or indirectly cause iatrogenic infertility and who are within reproductive age.

38-01270-25 2025924__

(b) Coverage of standard fertility preservation services under this subsection includes the costs associated with the storage of oocytes and sperm, for a period not to exceed 3 years.

(c) A state group health insurance plan may not require preauthorization for coverage of standard fertility preservation services; however, a health benefit plan may contain provisions for maximum benefits and may subject the covered service to the same deductible, copayment, coinsurance, and reasonable limitations and exclusions to the extent that these applications are not inconsistent with this subsection.

(d) As used in this subsection, the term:

1. "Iatrogenic infertility" means an impairment of fertility caused directly or indirectly by surgery, chemotherapy, radiation, or other medical treatment with a potential side effect of impaired fertility as established by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.

2. "Reproductive age" means the age range in which an individual is deemed fertile as established by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.

3. "Standard fertility preservation services" means oocyte and sperm preservation procedures, including ovarian tissue, sperm, and oocyte cryopreservation, which are consistent with established medical practices or professional guidelines published by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.

Section 2. This act shall take effect July 1, 2025.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 1058
INTRODUCER:	Senator Gruters
SUBJECT:	Gulf of America
DATE:	March 10, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney	GO	**Pre-meeting**
2.			AED	
3.			RC	

I. Summary:

SB 1058 directs state agencies, district school boards, and charter school governing boards to update, change, or create materials to rename the "Gulf of Mexico" to the "Gulf of America." Each state agency must update its "geographic materials;" and each district school board and charter school, beginning July 1, 2025, must adopt and acquire materials reflecting the renaming. The Department of Transportation is directed to rename what is currently designated as the "Tamiami Trail" to the "Gulf of America Trail" and erect suitable markers designating the stretch of road as the Gulf of America Trail.

The bill will require state and local governmental entities to incur costs to comply with the requirements of this bill. The magnitude of the costs is unknown at this time.

The bill takes effect on July 1, 2025.

II. Present Situation:

Executive Order 14172: Gulf of America

On January 20, 2025, President Donald Trump signed Executive Order 14172, entitled "Restoring Names That Honor American Greatness." In relevant part, the President "direct[ed] that the [the Gulf of Mexico] officially be renamed the Gulf of America." Additionally, the Executive Order instructs the Secretary of the Interior to take all appropriate actions to rename the "Gulf of Mexico" to the "Gulf of America." The Secretary is directed to update the Geographic Names Information System to reflect such change. The Board on Geographic Names, established by the Executive Order, provides guidance to ensure all federal references to the Gulf of America, including references included on agency maps, or in contracts and other documents and communications, shall reflect its renaming.

Tamiami Trail

The Tamiami Trail, also known as U.S. Highway Route 41, connects Tampa to Miami. Once the only paved highway between Tampa and Miami, today this portion of the 275-mile trail provides a practical way to maneuver among some of the most desirable cities on Florida's so-called Cultural Coast.[1]

Legislative Designations of Transportation Facilities

Section 334.071, F.S., provides that a legislative designation of a transportation facility is for honorary or memorial purposes or to distinguish a particular facility. Such a designation is not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.[2]

When the Legislature establishes a road or bridge designation, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation and to erect any other markers it deems appropriate for the transportation facility.[3]

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, each affected local government must pass a resolution supporting the designation before the installation of the markers.[4]

Public School Instructional Materials

Florida Statutes addresses instructional materials for K-12 public education.[5] Instructional materials are items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course.[6] Instructional materials used must be consistent with the district goals and objectives as well as with the applicable state academic standards and course descriptions provided for in law.[7]

Each district school board is responsible for the content of all instructional materials and any other materials used in classrooms or otherwise made available in school libraries or resources.[8] The Florida Department of Education (DOE) facilitates the statewide instructional materials adoption process. Expert reviewers chosen by the DOE objectively evaluate materials with

[1] Dalia Colon, *Florida Scenic Highway: Tamiami Trail, Window to the Gulf Coast*, https://www.visitflorida.com/travel-ideas/articles/tamiami-trail-florida-scenic-drives/ (last visited Mar. 6, 2025).
[2] Section 334.071(1), F.S.
[3] Section 334.071(2), F.S.
[4] Section 334.071(3), F.S.
[5] *See* ss. 1006.28-1006.42, F.S.
[6] Section 1006.29(2), F.S.; *see* s. 1006.28(1)(a)2., F.S. (referring the definition of instructional materials to align with s. 1006.29(2), F.S.).
[7] Section 1006.28(2)(b), F.S.
[8] Section 1106.28(2)(a)1., F.S.

Florida's state-adopted standards in mind,[9] and based on reviewer recommendations, the Commissioner of Education selects and adopts instructional materials for each grade and subject under consideration.[10]

District school boards have "the constitutional duty and responsibility" to ensure the instructional materials it selects and provides are *adequate* "for all students in accordance with the requirements of [Part I of ch. 1006, F.S.]".[11] Providing adequate instructional materials means ensuring "a sufficient number of student or site licenses or sets of materials… that serve as the basis for instruction in the core subject areas" are available to students.[12] School boards must also establish and maintain a program of school library media services for all public schools in the district, including school library media centers.[13] A library media center is any collection of books, ebooks, periodicals, or videos maintained and accessible on the site of a school.[14]

Currently, there is no required timeline for DOE to adopt or publish a list of adopted instructional materials, often leading to the overlapping of the state-level adoption and district-level adoption of instructional materials. The DOE must provide training to instructional materials reviewers on competencies for making valid, culturally sensitive, and objective recommendations regarding the content and rigor of instructional materials prior to the beginning of the review and selection process.[15]

Charter Schools

In Florida, charter schools are public schools and a part of Florida's public education program. A charter school may be formed by creating a new school or converting an existing public school to charter status.[16] Applications for charter schools must be approved by the Charter School Review Commission, with the Department of Education,[17] or by sponsoring district school boards.[18] Charter schools are exempted from many public-school regulations and are organized a nonprofit organization.[19]

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section of law directing each "state agency" to update its "geographic materials" to reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America." Each district school board and charter school governing board, beginning July 1, 2025, must adopt and acquire instructional materials and library media center collections that also reflect this new federal designation.

[9] Section 1006.31, F.S.
[10] Section 1006.34(2), F.S.
[11] Section 1106.28(2), F.S.
[12] Section 1106.28(1)(a)1., F.S.
[13] Section 1006.28(2)(d), F.S.
[14] Section 1006.28(1)(a)3., F.S.
[15] Section 1006.29(5), F.S.
[16] Section 1002.23(1), F.S.
[17] Section 1002.3301, F.S.
[18] Section 1002.33(6)(b), F.S.
[19] Sections 1002.33 and 1022.33, F.S.

Section 2 creates an unnumbered section of law designating the portion of U.S. 41 between S.R. 60 and U.S. 1, currently designated as the Tamiami Trail, as the "Gulf of America Trail." The FDOT must erect suitable markers designating the Gulf of America Trail.

Section 3 provides that the act takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

Requiring the purchase of new materials to reflect the changes mandated by this bill may positively impact businesses and individuals who make or edit geographic materials, educational materials, and makers used by the Department of Transportation to indicate designated trails. Collateral and ancillary services, such as workers to erect the signs designating the Gulf of America Trail, may also experience a positive fiscal impact.

Contracted education service providers and testing groups may need to update their materials and packages to reflect this change.

C. Government Sector Impact:

The bill directs state agencies, schools, and the Department of Transportation to make certain changes to acquire, provide, or create materials. The costs to comply with the requirements of this bill are indeterminate at this time.

VI. Technical Deficiencies:

This bill creates an undesignated section of law, meaning there is no relevant pre-existing definitions section that may provide guidance on certain meaning of words. Accordingly, the sponsor may wish to define the term "state agency" (line 18). Without clearly delineating which agencies have the responsibility to update their "geographic materials," whether that designation specifically refers to just state entities, and if the designation expands beyond executive branch entities.

Additionally, the term geographic materials is undefined and unclear. This term does not otherwise appear in the Florida Statutes.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill creates an undesignated section of law.

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.

212152

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Governmental Oversight and Accountability (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. (1) Each state agency as defined in s. 11.45(1), Florida Statutes, shall update its geographic materials to reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America."

(2) Instructional materials as defined in s. 1006.28(1)(a), Florida Statutes, and library media center collections adopted

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or acquired on or after July 1, 2025, by a district school board or charter school governing board must reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America," when applicable.

Section 2. This act shall take effect July 1, 2025.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Gulf of America; requiring state agencies to update geographic materials to reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America"; requiring that specified materials and collections adopted or acquired by district school boards and charter school governing boards on or after a specified date reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America"; providing an effective date.

By Senator Gruters

22-01362A-25 20251058__

A bill to be entitled

An act relating to the Gulf of America; requiring state agencies to update geographic materials to reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America"; requiring district school boards and charter school governing boards to, beginning on a specified date, adopt and acquire specified materials and collections that reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America"; providing an honorary designation of a certain transportation facility in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. (1) Each state agency shall update its geographic materials to reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America."

(2) Each district school board and charter school governing board, beginning July 1, 2025, shall adopt and acquire instructional materials, as defined in s. 1006.28(1)(a), Florida Statutes, and library media center collections that reflect the new federal designation of the "Gulf of Mexico" as the "Gulf of America."

Section 2. Gulf of America Trail designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. 41 between S.R. 60 and U.S. 1 in

Florida Senate - 2025 **SB 1058**

22-01362A-25 20251058__

Miami-Dade, Collier, Lee, Charlotte, Sarasota, Manatee, and Hillsborough Counties is designated as "Gulf of America Trail."

(2) The Department of Transportation is directed to erect suitable markers designating the Gulf of America Trail as described in subsection (1).

Section 3. This act shall take effect July 1, 2025.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 448
INTRODUCER:	Senator Burgess
SUBJECT:	Administrative Procedure
DATE:	March 10, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 448 amends the Administrative Procedures Act to:

- Implement an expiration date for most administrative rules, both existing and proposed. An agency may save a rule from expiration if the rule is re-adopted, by current procedures for the adoption of a new rule, before its expiration.
- Require an agency to complete a Statement of Estimated Regulatory Costs (SERC) for all proposed rules, notices of change, or final rules. Under current law, a SERC is completed when it will cause an adverse impact on small businesses, or have a financial impact of $200,000 on regulatory costs within one year. The bill also requires an agency to perform a cost-benefit analysis as part of its SERC, which must find that the benefit of the rule outweighs its cost. Under current law, a SERC is limited to an economic analysis showing the rule's impact on a variety of economic sectors, especially private business and regulatory costs for those businesses. The bill allows any person (rather than just a person with a substantial interest) to challenge a rule on the grounds that the agency failed to adhere to these SERC requirements.
- Require an agency to engage in additional cost-benefit analyses of a rule four and eight years after the rule takes effect.
- Award attorney fees and costs to the prevailing party in a rule challenge based solely on the grounds that the agency lacked express statutory authority to adopt the rule or issue the guidance document upon which the action is based.

The bill will result in significant increased costs to all agencies that engage in rulemaking.

The bill takes effect July 1, 2025.

II. Present Situation:

Rulemaking Authority

The Legislature is the sole branch of government with the inherent power to create laws.[1] However, the Legislature may use laws to delegate to executive branch agencies the power to create rules that have the force and effect of law.[2] Usually, the Legislature delegates rulemaking authority to a given agency because an agency has "expertise in a particular area for which they are charged with oversight."[3] An agency must have both a general and a specific grant of rulemaking authority from the Legislature.[4] The general grant of rulemaking authority is usually broad, while the specific grant of rulemaking authority provides specific standards and guidelines the agency must implement through rulemaking.[5] An agency, therefore, cannot create rules at its discretion but instead must limit the rule to the specific empowerments and responsibilities delegated by the Legislature in law.[6] A rule is an agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedures or practice requirements of an agency.[7] An agency rule therefore includes forms and applications used to administer a program.

The Florida Administrative Procedures Act (APA)[8] provides a framework for rulemaking to be followed by agencies.[9] The APA provides that rulemaking is not a matter of agency discretion; rather, each agency statement that is in effect a "rule" must be adopted by the rulemaking procedure set forth in the APA as soon as feasible and practicable.[10]

At several points throughout the rulemaking process, citizens, state bodies, such as the Joint Administrative Procedures Committee (JAPC), and the Executive Office of the Governor through the Office of Fiscal Accountability and Regulatory Reform, have a right to intervene in the process and provide feedback.

Rulemaking Process

The APA[11] provides uniform procedures that agencies must follow when they engage in rulemaking. An agency may initiate rulemaking either as the result of a legislative mandate in

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[1] Article III, s. 1, FLA. CONST. *See also* Art. II, s. 3, FLA. CONST.
[2] Section 120.52(17), F.S. *See also, Whiley v. Scott,* 79 So. 3d 702, 710 (Fla. 2011) ("Rulemaking is a derivative of lawmaking.").
[3] *Whiley*, 79 So. 3d at 711 (Fla. 2011).
[4] Sections 120.52(8) and 120.536(1), F.S.
[5] *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[6] Section 120.54(1)(a), F.S. *See also*, s. 120.52(8)(b), which defines agency action outside of its grant of rulemaking authority (including action on unadopted policies, or the action outside of the scope of its adopted rules) as an invalid exercise of delegated legislative authority.
[7] Section 120.52(16), F.S.
[8] Sections 120.51 *et seq*., F.S.
[9] *Dep't. of Transp. v. Blackhawk Quarry Co. of Fla.*, 528 So. 2d 447, 449 (Fla. 4th DCA 1988); 2 FLA. JUR. 2D ADMINISTRATIVE LAW s. 5 *Florida Administrative Procedure Act, generally; purpose* (2024).
[10] Sections 120.52 and 120.54(1); 2 FLA. JUR. 2D ADMINISTRATIVE LAW s. 5 *Florida Administrative Procedure Act, generally; purpose* (2024).
[11] Chapter 120, F.S.

statute, public request,[12] or its own agency initiative—presuming sufficient rulemaking authority exists in statue.

Notice of Rule Development

An agency begins the formal rulemaking process[13] by filing a notice of rule development in the Florida Administrative Register (FAR), which must indicate the subject area to be addressed by the rule development and provide a short, plain explanation of the rule's purpose and effect.[14] Such notice is required for all rulemaking (including creation of a new rule and amendment of an existing rule) except for rule repeals. A notice of rule development may, but is not required to, include the preliminary text of the proposed rule or amendment.[15] At this point, the public may participate in the rulemaking process through either a request for a public rule development workshop,[16] negotiated rulemaking,[17] or simply communication of one's position to the agency.[18]

Notice of Intended Agency Action

Next, an agency must file a notice of intended agency action, which may be a notice of proposed rule, a notice of proposed amendment to an existing rule, or a notice of rule repeal. This section (and ch. 120, F.S., more generally) use the term "proposed rule" to refer to both a proposed rule and a proposed amendment to a rule. The notice must contain the full text and a summary of the proposed rule or amendment, as well as a reference to the grant of rulemaking authority and the specific statute or law the agency is implementing or interpreting.[19] The agency must also include a summary of its Statement of Estimated Regulatory Costs (SERC), if it prepared one.

The notice of intended agency action must also provide information detailing how a member of the public can:

- Request that the agency hold a public hearing on the proposed rule. The requesting party must be affected by the proposed rule and must request the hearing within 21 days of the publication of the notice of proposed rule (or other intended agency action);[20]
- Provide input regarding the agency's SERC;[21]
- Submit a lower cost regulatory alternative (LCRA) pursuant to s. 120.541(1)(a), F.S.; or

[12] Section 120.54(7)(a), F.S.
[13] Alternatively, a person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7), F.S.
[14] Section 120.54(2), F.S.
[15] Section 120.54(2), F.S., requires the agency to "include the preliminary text of the proposed rules, if available…"
[16] Section 120.54(2)(c), F.S., requires an agency to hold a public workshop for the purposes of rule development, if requested in writing by an affected person, unless the agency head explains in writing why a workshop is unnecessary.
[17] Section 120.54(2)(d), F.S.
[18] Jowanna Oates, The Florida Bar, *Escaping the Labyrinth: A Practical Guide to Rulemaking*, 29 FLA. BAR J. 61, *available at* https://www.floridabar.org/the-florida-bar-journal/escaping-the-labyrinth-a-practical-guide-to-rulemaking/ (last visited Mar. 10, 2025).
[19] Section 120.54(3)(a), F.S.
[20] Section 120.54(3)(c), F.S. The agency cannot file the rule for adoption with the Department of State until at least 14 days after the final public hearing has occurred.
[21] See "Statement of Estimated Regulatory Cost" section above.

- Petition for an administrative hearing held by an administrative law judge at the Division of Administrative Hearings (DOAH) on whether the proposed agency action is a proper exercise of authority or is otherwise invalid.[22]

Statements of Estimated Regulatory Costs (SERC) and Lower Cost Regulatory Alternatives

A SERC is an agency's estimation of the impact of a rule on the public, focusing on the implementation and compliance costs.[23] An agency is encouraged to prepare a SERC before adopting, amending, or repealing any rule[24] but is not required to do so unless the proposed action will have a negative impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within 1 year.[25] If the SERC determines that the rule will have an adverse impact of $1 million within 5 years on economic growth, private sector investment, private business' productivity or innovation, or regulatory costs, then the rule must be referred for Legislative ratification after its adoption; the rule does not take full effect until ratified by the Legislature.[26]

If the agency completes a SERC, it must provide a hyperlink to it in the applicable notice of intended agency action. If the agency revises a rule before its adoption and the revision increases the rule's regulatory costs, then the agency must revise the SERC appropriately.[27]

A person who is substantially affected by a proposed rule may submit a lower cost regulatory alternative (LCRA). A LCRA may recommend that the rule not be adopted at all, if it explains how the lower costs and objectives of the law will be achieved. If an agency receives an LCRA, it must prepare a SERC if it has not done so already or revise its prior SERC to reflect the LCRA's input. The agency must either adopt the LCRA or explain its reasons for rejecting it.[28] In order to provide adequate time for review, the agency must provide its new or revised SERC to the individual who submitted the LCRA and to the JAPC.[29] The agency must also post a notice of the SERC's availability on the agency website at least 21 days before it files the rule for adoption.[30]

Agencies must also separately consider the impact of a proposed rule, amendment, or rule repeal on small businesses, small counties, and small cities, and consider alterations to the rule to lessen any impact to these entities. If an agency determines that a proposed agency action will affect small businesses, then it must forward the notice to the rules ombudsman, an appointee of the Governor.[31] The rules ombudsman makes recommendations on any existing or proposed rules to

[22] Section 120.56(2)(a), F.S.
[23] Section 120.541(2), F.S.
[24] Section 120.54(3)(b)1., F.S.
[25] *Id.*; s. 120.541(2)(a), F.S.
[26] See s. 120.541(3), F.S., for exceptions for the adoption of specific federal standards and updates to the Florida Building and Fire Prevention Codes. *Fernandez v. Dep't. of Health, Bd. of Medicine*, 223 So. 3d 1055, 1057-8 (Fla. 1st DCA 2017).
[27] Section 120.541(1)(c), F.S.
[28] Section 120.541(1)(d), F.S.
[29] The Joint Administrative Procedures Committee (JPAC) "examines existing and proposed rules made by agencies in accordance with [the Administrative Procedures Act]." *Comm'n on Ethics v. Sullivan*, 489 So. 2d 10, 14 (Fla. 1986); *see* s. 120.545, F.S. (referring to "the committee" which section 120.52, F.S., defines as the Administrative Procedures Committee).
[30] *Id*.
[31] Sections 120.54(3)(b)2. and 288.7015, F.S.

alleviate unnecessary or disproportionate adverse effects to business.[32] Each agency must adopt recommendations made by the rules ombudsman to minimize impacts on small businesses, unless the adopting agency finds the recommendation unfeasible or inconsistent with the proposed rule's objectives.[33]

Filing for Adoption of the Proposed Rule

The agency must submit materials proving compliance with the rulemaking process to the JAPC, which must then review the rule for compliance.[34] The JAPC must certify to the Department of State (DOS) whether the agency responded to all material and timely written comments or inquiries made on behalf of JAPC (these inquiries are outlined in additional detail below in the "Joint Administrative Procedures" section). If the JAPC notifies the agency that it is considering making an objection to the adopted rule or amendment based on its inquiry, the agency may withdraw or modify the rule by publication in the FAR and notice to interested parties. Once an agency has completed the rulemaking steps within the appropriate timeframe, the agency may file the rule for adoption with the DOS.[35]

The DOS may approve an agency rule for adoption if it finds that the agency:
- Filed the rule for adoption within the applicable timeframes;
- Complied with all rulemaking requirements;
- Timely responded to all material and timely written inquiries or comments; and
- Is not engaged in pending administrative determination on the rule in question.[36]

The rule becomes effective 20 days after such filing for adoption, unless a different date is indicated in the rule.[37]

Expiration or Challenges of a Rule

A rule does not expire unless the underlying delegation of legislative authority is repealed or otherwise made ineffective.[38] There are several ways in which a rule can be made ineffective—by investigation by the JAPC, which often results in agency agreement to amend or repeal a rule; by rule challenge from a substantially affected party on the basis that the rule was not adopted in accordance with the APA's requirements, or is an invalid delegation of legislative authority; or by legislative action repealing the underlying delegation of legislative authority.

Joint Administrative Procedures Committee Review of Proposed and Adopted Rules

The JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those

[32] Section 288.7015(3), F.S. *See also*, E.O. 11-01 (establishing the Office of Fiscal Accountability and Regulatory Reform (OFARR)) (renewed by E.O. 11-72 and 11-211).
[33] Section 120.54(3)(b)2.b.(II)., F.S.
[34] Section 120.54(3)(a)4., F.S.
[35] Section 120.54(3)(e), F.S.
[36] Section 120.54(3)(e)4., F.S.
[37] Section 120.54(3)(e)6., F.S.
[38] Section 120.536, F.S.

rules are based, and the administrative rulemaking process.[39] The JAPC *may* examine existing rules, but *must* examine each proposed rule to determine whether:

- The rule is a valid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;
- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements;
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- The rule could be made less complex or more easily comprehensible to the general public;
- The rule's statement of estimated regulatory costs (discussed below) complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or
- The rule will require additional appropriations.[40]

If, during its review, the JAPC has concerns that a proposed or existing rule may not be authorized or exceeds the delegated rulemaking authority, it contacts the agency. Often the agency agrees that there is no authority for the rule and withdraws or amends the rule to meet the staff concerns.[41] If there is disagreement, the rule is scheduled for consideration by the full committee. The agency may appear before the JAPC and present argument and evidence in support of its rule. If, after hearing the agency's argument, the JAPC does not find statutory authority for the rule, it votes on an objection and the agency must respond.[42] If the agency refuses to modify or withdraw a rule to which the JAPC has objected, public notice of the objection is given, and a notation accompanies the rule when it is published in the Florida Administrative Code (FAC). The JAPC may also seek judicial review to establish the invalidity of a rule or proposed rule but has not exercised this authority to date.[43]

Rule Challenges

Sections 120.56-120.595, F.S., provide the general process for challenging a rule (either proposed or final).

Unadopted Rules (Section 120.56(4), F.S.)

Generally, an agency cannot base its action that determines the substantial interests of a party on an unadopted rule.[44]

[39] 2 Fla. Leg. J. Rule 4.6. *See also* s. 120.545, F.S.
[40] Section 120.545(1), F.S.
[41] JAPC, *2024 Annual Report* at 1 (Jan. 11, 2024), https://www.japc.state.fl.us/Documents/Publications/2024AnnualReport.pdf (last visited Mar. 10, 2025).
[42] Section 120.545(3)-(7), F.S.
[43] JAPC, *2024 Annual Report* at 2 (Jan. 11, 2024), https://www.japc.state.fl.us/Documents/Publications/2024AnnualReport.pdf (last visited Mar. 10, 2025).
[44] Section 120.57(2)(b), F.S.

An unadopted rule is an agency statement that meets the definition of the term "rule," but that hasn't been adopted in accordance with the requirements of the APA—it can include a form, a policy, and the amendment or repeal of a rule.[45, 46] An agency statement or policy is a rule if its effect requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law.[47]

An individual who is substantially affected by an agency statement that is an unadopted rule may seek an administrative determination by an administrative law judge (ALJ) that the agency statement was not adopted as required by s. 120.54(1)(a), F.S. An agency may rebut a finding if it shows that it has sufficient rulemaking authority, has not had time to adopt rules because the legislative delegation occurred recently, and has initiated rulemaking and is proceeding in good faith to adopt the rule.[48] The agency must demonstrate that the unadopted rule:[49]

- Is within the powers, functions, and duties delegated by the Legislature or the State Constitution, if applicable.
- Does not enlarge, modify, or contravene the specific provisions of the law implemented.
- Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency.
- Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic and the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.
- Is not being applied to the substantially affected party without due notice.
- Does not impose excessive regulatory costs on the regulated person, county, or city.

If the administrative law judge finds that the rule was not properly adopted by the agency, then the agency can no longer rely on that rule.[50]

The prevailing non-agency party is awarded reasonable costs and attorney's fees, not to exceed $50,000, in a matter in which an appellate court or ALJ finds that the agency statement was not adopted properly, and that the statement is not otherwise required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receive federal funds. Alternatively, if an agency commences rulemaking during the rule challenge proceedings, then the ALJ must award reasonable costs and attorney's fees accrued by the petitioner prior to the notice of rulemaking's publication, unless that agency proves that it did not know and should not have known that the statement was an unadopted rule. For attorney's fee awards in both instances, there must be a finding that (1) the agency received notice that the statement may constitute an unadopted rule at least 30 days before petitioner filed a petition; and (2) the agency failed to publish a required notice of rulemaking that addresses the statement within 30-day period.[51]

[45] Section 120.52(20), F.S.
[46] Section 120.52(16), F.S.
[47] *Jenkins v. State*, 855 So. 2d 1219, 1225 (citing *Fla. Dep't of Revenue v. Vanjaria Enters., Inc.*, 675 So. 2d 252, 254-255 (Fla. 5th DCA 1996); *Balsam v. Dep't of Health & Rehabilitative Servs.*, 452 So. 2d 976, 977-978 (Fla. 1st DCA 1984)).
[48] Section 120.57(1)(e)(3), F.S.
[49] *Id*.
[50] Section 120.56(4)(e), F.S.
[51] Section 120.595(4)(a)-(b), F.S.

Invalid Exercise of Delegated Legislative Authority (Sections 120.56(2)-(3), F.S.)

An invalid exercise of delegated legislative authority is an action that "goes beyond the powers, functions, and duties delegated by the Legislature." A proposed or existing rule is an invalid exercise of delegated legislative authority if any of the following apply:[52]

- The agency materially failed to follow the applicable rulemaking process or requirements (generally outlined in s. 120.54, F.S.);
- The agency exceeded its grant of rulemaking authority;
- The rule enlarges, modifies, or contravenes the specific provisions of law implemented;
- The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;
- The rule is arbitrary or capricious; or
- The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

All rulemaking authority delegated to administrative agencies is limited by the statute that confers the power to do so.[53] Section 120.536, F.S., states clearly that "a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required." Additionally, "[n]o agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation […] nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy." Conversely, the legislature cannot delegate unbridled discretion to an agency.[54]

Any person with standing may file a rule challenge at the Department of Administrative Hearings (DOAH) to challenge a rule or proposed rule as an invalid delegation of legislative authority pursuant to ss. 120.56(3)(a) and 120.56(2)(a), F.S., respectively.[55] The individual must prove by a preponderance of the evidence that he or she will be substantially affected by the proposed rule,[56] or that the existing rule is an invalid exercise of delegated legislative authority.[57] If the rule is declared an invalid exercise of delegated legislative authority, then the rule is deemed void, and the agency must give notice of such in the FAR.[58]

The prevailing non-agency party is awarded reasonable costs and attorney's fees, not to exceed $50,000, in a matter in which an appellate court or ALJ finds that a proposed rule, or portion thereof, is an invalid exercise of delegated legislative authority.[59] However, if an agency can demonstrate that its underlying actions were substantially justified (there was a reasonable basis in law and fact at the time the agency took the actions) or that special circumstances exist which would make the award unjust, the agency may not have to pay such attorney's fees.

[52] Section 120.52(8), F.S.
[53] *Bd. of Trustees of Internal Imp. Trust Fund of Fla. v. Bd. of Prof. Land Surveyors*, 556 So. 2d 1358, 1360 (Fla. 1st DCA, 1990) (citing *Dep't of Prof. Reg. v. Fla. Society of Prof. Land Surveyors*, 475 So. 2d 939, 942 (Fla. 1st DCA 1985)).
[54] Section 120.52(8)(d), F.S.
[55] Section 120.57(1)(e)2.b., F.S.
[56] Section 120.56(2)(a), F.S.
[57] Section 120.56(3)(a), F.S.
[58] Section 120.56(3)(b), F.S.
[59] Section 120.595(2)-(3), F.S.

The Office of Legislative Services

The Office of Legislative Services (OLS) oversees the statutory revision plan, which involves recommending the deletion of all laws which have expired, become obsolete, and/or had their effect or served their purpose.[60] Similarly, the OLS is authorized to include duplicative, redundant, or unused statutory rulemaking authority among its recommended repeals in revisers bill recommendations.[61] The OLS is also authorized to exercise all other powers, duties, and functions necessary or convenient for properly carrying out the provisions of law relating to statutory revision.[62]

Agency Guidance

Declaratory Statement[63]

Any substantially affected person may seek an agency declaratory statement to clarify the agency's opinion regarding the applicability of a statute, agency rule, or agency order, as it applies to the petitioner's particular set of circumstances.[64] An individual who seeks declaratory relief must show that:

- There is a bona fide dispute, not a hypothetical question;
- The plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend;
- The plaintiff is in doubt as to the claim; and
- There is a bona fide, actual, present need for the declaration.[65] For this reason, an agency may not issue a declaratory statement when there is pending litigation—there is no need for agency action where it has been preempted by the judicial exercise of jurisdiction on the same matter.[66]

The agency must either deny the petition or provide a declaratory statement within 90 days of its receipt of the petition, and must publish notice of such action in the Florida Administrative Register.[67]

A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.[68] While an agency cannot use a declaratory statement to announce a rule or rule policy, it may issue a declaratory statement that deals with the petitioner's particular set of circumstances while, at the

[60] Section 11.241(1)(i), F.S.
[61] Section 11.241(5)(j), F.S.
[62] Section 11.241(8), F.S.
[63] *See generally*, Fred. Dudley, *The Importance and Proper Use of Administrative Declaratory Statements*, 87 Fla. Bar Journal 41 (March 2013).
[64] Section 120.565, F.S. *See also, Citizens of the State ex rel. Office of Pub. Counsel v. Fla. Pub. Serv. Comm'n*, 164 So. 2d 58, 59 (Fla. 1st DCA 2015).
[65] *Heisel v. City of Deltona*, 328 So. 3d 56 (Fla. 5th DCA 2021), *citing Ribaya v. Bd. of Trs. Of City Pension Fund for Firefighters & Police Officers in the City of Tampa*, 162 So. 3d 348, 352 (Fla. 2d DCA 2015).
[66] *ExxonMobil Oil Corp. v. Fla. Dep't of Agriculture and Consumer Servs*, 50 So. 3d 755 (Fla. 1st DCA 2010).
[67] *Id*.
[68] Rule 28-105.001, Fla. Admin. Code

same time, announcing its intention to initiate rulemaking to establish an agency statement of general applicability.[69]

Should a party disagree with an agency's declaratory statement, they may seek review in the appellate courts, which can reverse the statement if the agency's interpretation of the law is clearly erroneous[70] or if there is clear error or conflict with the statute's intent.[71]

Department of Revenue Technical Assistance Advisement

The Department of Revenue is specifically granted authority to issue informal rulings called "Technical Assistance Advisements" (TAAs) to a taxpayer who requests the agency's position on a tax problem that he or she faces.[72] These are distinct from a declaratory statement, but are similarly used—to answer taxpayer inquiries pertaining to the tax effects and consequences of their acts and transactions—but are even more limited in their application in that they have no precedential value except to the individual taxpayer or taxpayer association who requests the TAA.

Federal Guidance Documents

"Guidance documents" is not a term used in Florida Statutes. The federal APA, however, recognizes two types of "guidance documents," interpretive rules and general statements of policy. Interpretive rules are statements of general applicability and future effect that set forth an agency's interpretation of a statute or regulation. General statements of policy set forth an agency's policy on a statutory, regulatory, or technical issue—for example, the agency's intended posture on enforcement priorities.[73] Both of these agency statements would likely be classified as a rule under Florida law (or something that should be adopted as a rule, and therefore subject to challenge as an unadopted rule).[74]

III. Effect of Proposed Changes:

Challenge of Agency Guidance Documents and Other Agency Interpretive Statements

Section 1 amends s. 120.52, F.S., to include in the definition of "invalid exercise of delegated legislative authority" a specific statement that a proposed rule or existing rule is an invalid exercise of authority if the agency issues a guidance letter or other statement interpreting a statute without express statutory delegation to issue such guidance.

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[69] *Fla. Dep't of Bus. And Prof. Reg., Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999).

[70] A declaratory statement is defined as an agency final order in s. 120.52(7), F.S. Section 120.68, F.S., provides for appeal of agency final orders to district courts of appeal. *Thrivent Financial for Lutherans v. Fla. Dep't of Financial Servs*, 145 So. 3d 178 (Fla. 1st DCA 2014), *superseded on other grounds*.

[71] *Sans Souci v. Div. of Fla. Land Sales and Condominiums, Dep't of Bus. Reg*., 421 So. 2d 623 (Fla. 1st DCA 1982).

[72] Section 213.22, F.S.

[73] Congressional Research Service, Kate Bowers, *Agency Use of Guidance Documents* (Apr. 19, 2021), https://crsreports.congress.gov/product/pdf/LSB/LSB10591 (last visited Mar. 10, 2025).

[74] Sections 120.52 and 120.54(1); 2 FLA. JUR. 2D ADMINISTRATIVE LAW s. 5 *Florida Administrative Procedure Act, generally; purpose* (2024).

Similarly, **section 2** amends s. 120.536, F.S., to prohibit an agency from issuing guidance documents unless the agency has been expressly granted the power to issue guidance documents by a specific statutory delegation.

Section 7 amends s. 120.56, F.S., which describes the rule challenge procedures to add that any person affected by a rule *or guidance document* may pursue an administrative challenge at the Division of Administrative Hearings pursuant to s. 120.56, F.S. If an agency declaratory statement issued pursuant to s. 120.565, F.S., is ultimately determined to be a "guidance document," then this will subject such agency declaratory statements to challenge at DOAH, whereas they are currently deemed final agency action reviewable by a district court of appeal.

The bill further provides that any party subject to an "enforcement action" may challenge the action solely on the grounds that the agency lacked express statutory authority to adopt the rule or issue the guidance document upon which it based its action. The bill allows the prevailing party to recover reasonable costs and attorney's fees in such challenges.

SERC

SERC required of all Rules

Section 3 amends s. 120.541, F.S., to require an agency to prepare a statement of estimated regulatory costs (SERC) for all proposed rules, notices of change, and final rules, regardless of whether the agency action will result in an adverse impact or increase regulatory costs. The bill expands the SERC requirements to include a cost-benefit analysis that "clearly demonstrates" that the rule's (or other action's) projected benefits "exceed" the projected costs that will be incurred for at least the first 5 years after the rule goes into effect. The agency must also publish on a publicly accessible website the documents, assumptions, methods, and data that it used to prepare the SERC in a machine-readable format, when relevant, so that the analysis and its results can be replicated. Examples of such information include supporting calculations, databases, and data tables.

Section 7 amends s. 120.56, F.S., to allow a person (rather than a party with substantial interests) to challenge a rule on the grounds that an agency failed to comply with the new SERC requirements, specifically by:

- Failing to prepare a SERC;
- Preparing a SERC that does not include all of the required information;
- Failing to make the SERC and its underlying data and analysis publicly available; or
- Failing to conduct a retrospective analysis.

If an ALJ finds that an agency failed to comply with s. 120.541, F.S., then the rule must be declared invalid and void.

The bill requires a SERC for each "proposed rule…or final rule[.]"

Ongoing Analysis

The bill requires agencies to conduct a second agency cost-benefit analysis 4 years after the rule's effective date. This analysis, which does not appear to be subject to the full SERC requirements, must compare the rule's actual costs and benefits to the projected costs included in

the rule's initial SERC. The agency must conduct a third analysis as part of its rule review which must compare the initial SERC, the 4-year cost-benefit analysis, and any other outcome observed up to the time of the final analysis.

The bill directs agencies to incorporate findings and lessons learned from its analyses (particularly the final rule analysis) into the standards for future SERCs,[75] and to apply those standards to similar rules.

Rule Expiration

Section 5 creates s. 120.55, F.S., to implement a recurring 8-year expiration date from the effective date (or last expiration date) of each rule adopted after July 1, 2025. For rules that are already in effect, the JAPC must set an expiration date that falls between two and twelve years after July 1, 2025. The Governor may extend the expiration date by no more than 365 days based on an agency's request in which it explains why it cannot timely readopt the rule and why the expiration of the rule would harm the public's health, safety, or welfare. Any such extension does not extend the expiration date for purposes of subsequent reviews and expirations.

An agency may save its rule from expiration if it re-promulgates the rule in the same manner required for the proposal and adoption of new rules in s. 120.54, F.S. The agency cannot begin its rule review earlier than 1 year before the rule's expiration date.

Specific types of rules are exempt from the 8-year expiration, but are still subject to an agency review requirement. The exempt rules are those (1) required to comply with federal law, or to receive federal funds; (2) adopted pursuant to authority granted under the State Constitution; and (3) adopted by agencies that are headed by an elected official.

The agency review of the exempt rules will occur pursuant to a schedule set by the JAPC. The agency review of exempt rules consists of:

- Public notice of the review, including making the text of the notice, the text of the rule, and all analyses associated with the review available on the agency's website.
- Holding a 30-day public comment period.
- Conducting all analyses required "if the rule were being readopted pursuant to s.120.54[, F.S.]."
- Providing a reasoned response to unique public comments.
- Publishing a report on its website which includes the analyses and the agency's response to public comments.

The agency may not commence the exempt rule review earlier than 1 year before the JAPC-determined review date.

Section 4 makes a conforming change to s. 120.545, F.S., which requires the JAPC to ensure that each proposed rule has an expiration date that is set in accordance with the above requirements.

[75] It is not clear what a "standard" for a SERC is, and therefore this directive to the agency is ambiguous. Section 120.541(3), F.S., outlines required findings that an agency must include in a SERC, but these required findings and analyses are not defined as a "standard."

Section 6 makes a conforming change to s. 120.555, F.S., which directs the Department of State to update the Florida Administrative Code to remove the rule and provide historical notes which identify the expiration. Generally, s. 120.555, F.S., relates to the process for removal of a rule that the Department of State determines is not in full force and effect. It may be more appropriate to locate this instruction for removal of an expired rule from the Florida Administrative Code within s. 120.55, F.S., itself, which, similar to s. 120.536, F.S., instructs the Department of State to remove a rule from the Florida Administrative Code upon the nullification of the law that grants authority for the rule's adoption.

Effective Date

Section 8 provides that the law takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

The bill requires an agency to make public all data it relies on in the creation of its Statement of Estimated Regulatory Costs. This may include data that is exempt from public record disclosure requirements. The Legislature may wish to specify that an agency is not required to post data that is protected by a public record exemption.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

Administrative bodies or commissions, unless specifically created in the State Constitution, are creatures of statute and derive only the powers specified therein.[76] Thus, the APA expressly states that statutory language delegating authority to executive agencies must be construed to extend no further than the powers and duties conferred by

[76] *Grove Isle, Ltd. v. State Dept of Environmental Regulation*, 454 So. 2d 571 (Fla. 1st DCA 1984). *See also*, *WHS Trucking LLC v. Reemployment Assistance Appeals Comm'n*, 183 So. 3d 460 (Fla. 1st DCA 2016).

that statute.[77] Even when an agency is pursuing the policy objectives that underlie the statutory scheme it is charged with enforcing, the agency may not disregard or expand upon the terms of the statutes themselves.[78] Since administrative agency action is derived from legislative delegation, it follows that the legislature may oversee and alter that delegation.[79]

The bill provides that rules will expire by blanket application of a policy. A rule is created by an agency upon the Legislature's delegation of authority to the agency. The Legislative authority to affect the rule after its initial delegation is limited to oversight and amendment of the delegating statute.[80] The Legislature cannot force an agency to implement an expiration date in its rule unless the Legislature specifically provides for the expiration of authority in its delegating statute. Alternatively, the Legislature can repeal the delegating statute, which has the effect of repealing any rule adopted pursuant to its authority.[81]

The bill grants authority to the Governor to extend the effect of a rule by extending its expiration date by up to one year based on his adopted findings of harm that would result to the public health, safety, or welfare upon the rule's expiration. This does not clearly specify standards to guide the Governor in making this determination, and therefore grants the office the ability to apply its own understanding of a health, safety, or welfare need. This may constitute a separation of powers issue because "discretionary authority granted to the executive branch of government must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed."[82] To grant such authority without clear limits may be an unconstitutional delegation of the power to make law.[83]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

Private sectors impacted by rules may face higher costs associated with the ongoing rule expiration and re-adoption process. These private sectors will likely face higher attorney or consultant fees to provide industry input or to participate in rule challenges during these processes.

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[77] Sections 120.52(8) and 120.536(1), F.S. *See also, Tampa Bay Downs, Inc. v. Dep't of Bus. And Prof. Reg.*, 293 So. 3d 38 (Fla. 2d DCA 2020).
[78] *Tampa Bay Downs, Inc.*, 293 So. 3d 38.
[79] *City of Cape Coral v. GAC Utilities, Inc. of Fla.*, 281 So. 2d 493 (Fla. 1973).
[80] *Id*.
[81] 120.536, F.S.
[82] *Fla. Home Builders Ass'n v. Div of Labor, Bureau of Apprenticeship*, 367 So. 2d 219, 220 (Fla. 1979).
[83] Art. II, s. 3, FLA. CONST.

Additionally, rules will have a more uncertain effect long-term, as they may fail to be readopted at their 8-year expiration. This may result in uncertainty in certain industries that rely on administrative rules.

C. Government Sector Impact:

State agencies will see an increased cost associated with rulemaking to implement the heightened SERC duties and the work associated with re-adopting rules every 8 years.

The Legislature may be faced with an instance in which an agency is barred from enacting (or continuing) a rule to effectuate a statute's legislative delegation as the result of the rule's cost or the agency's failure to timely renew a rule. This may result in the failure of legislative policy to be carried out. The Legislature or a private citizen may incur litigation costs to enforce the underlying statute.

VI. Technical Deficiencies:

The bill addresses "guidance documents or other statements interpreting a statute." The term "guidance document" is not used in Florida Statutes. The federal concept of a guidance document would likely be classified as a rule under Florida law (or something that should be adopted as a rule and therefore subject to challenge as an unadopted rule).[84] However, an agency declaratory statement may also be considered a 'guidance document.' If the bill intends to include declaratory statements in the concept of a "guidance document or other statement that interprets a statute," then an additional amendment to s. 120.565, F.S., regarding declaratory statements, may be required for consistency. Additionally, if an agency interpretation of statute has general application, then current law would also define it as a rule that is subject to challenge as either an unadopted rule, or an invalid delegation of legislative authority.[85]

The bill adds "notice of change, or final rule" to several instances of "proposed rule." This results in inconsistent terminology throughout chapter 120, F.S., which, in practice, uses the term "proposed rule" to mean a proposed rule, and a proposed rule amendment. It is illogical to apply procedures for proposed rules to final rules, and may lead to redundancies in the rulemaking process wherein an agency has to do the same rulemaking procedures twice—once for the proposed rule (version published in the FAR) and again for the final rule (version published in the FAC), even though there are currently processes to account for amendments to the proposed rule that occur during the rulemaking process.

Section 5 requires an agency to readopt a rule "through rulemaking process outlined in s. 120.54, F.S." There is not a "readoption" process outlined in 120.54, F.S., therefore it is unclear whether the intent is to apply standard rule adoption procedures—e.g., requiring an agency to publish a notice of intended agency action, perform a SERC, and submit to the Legislature for ratification (if required).

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[84] Sections 120.52 and 120.54(1); 2 FLA. JUR. 2D ADMINISTRATIVE LAW s. 5 *Florida Administrative Procedure Act, generally; purpose* (2024).

[85] Section 120.52(8)(b), F.S., defines agency action outside of its grant of rulemaking authority (including action on unadopted policies, or the action outside of the scope of its adopted rules) as an invalid exercise of delegated legislative authority. Section 120.536, F.S., further states that agency rulemaking authority may occur "only pursuant to a specific law to be implemented."

A final rule cannot be adopted without first being put forth by the agency as a proposed rule. It is therefore unclear whether section 3 of the bill, which requires an agency to perform a SERC for "each proposed rule, notice of change, or final rule" requires two separate SERCs for the same policy—one at the time it is proposed and another at the time it is adopted as a final rule.

The bill requires an agency to demonstrate that its proposed rule's, notice of changes, or final rule's projected benefits outweigh its projected costs. A rule often implements a portion (the agency's implementation) of a larger policy crafted by a law. Therefore, the rule does not always reflect the benefit of the larger policy. The bill requires the agency's benefit to be limited to that found within the rule, not the policy it implements. Additionally, it is not clear how an agency should move forward with rulemaking if it cannot demonstrate this benefit. If the agency abandons the rule because of its cost, it would constitute a failure to act on the Legislature's delegation. The JAPC may not have grounds to certify a rule for adoption if its SERC does not include a statement of benefit outweighing its cost. Lastly, if the agency adopts the rule, it is subject to a rule challenge for failure to perform the SERC as required by the bill.

Section 120.541(1)(e), F.S., provides that "the failure of the agency to prepare a [SERC…] as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter." Lines 446-458 of the bill, which grant a person grounds to challenge a rule on the grounds that an agency failed to comply with s. 120.541, F.S., appear repetitive of this provision.

The term "enforcement action" as used on lines 440-441 is not defined and perhaps is better substituted with the more frequently used "agency action."

VII. Related Issues:

It is unclear whether the Department of Revenue's TAAs would be interpreted to qualify as a guidance document under the bill and thus be subject to rulemaking and SERC requirements. Such an interpretation would render void the provisions of s. 213.22, F.S., that state that a TAA "is not an order issued pursuant to s. 120.565 or s. 120.569 or a rule or policy of general applicability under s. 120.54. The provisions of s. 120.53 are not applicable to technical assistance advisements."

VIII. Statutes Affected:

This bill substantially amends sections 120.52, 120.536, 120.541, 120.545, 120.555, and 120.56, and creates s. 120.55 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Governmental Oversight and Accountability (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 118 - 385

and insert:

Section 3. Subsection (1), paragraph (g) of subsection (2), and subsection (5) of section 120.541, Florida Statutes, are amended, paragraph (h) is added to subsection (2) of that section, subsection (6) is added to that section, and subsection (4) of that section is reenacted, to read:

120.541 Statement of estimated regulatory costs.—

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(1)(a) An agency shall prepare a statement of estimated regulatory costs for each proposed rule, notice of change, or final rule, regardless of whether the proposed rule, notice of change, or final rule will have an adverse impact on small business or is likely to increase regulatory costs. The statement must include a cost-benefit analysis that clearly demonstrates that the projected benefits of the proposed rule, notice of change, or final rule exceed its projected costs.

(b) ~~(a)~~ Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(c) ~~(b)~~ If a proposed rule, notice of change, or final rule will have an adverse impact on small business or if the proposed rule, notice of change, or final rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the

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rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(d) ~~(c)~~ The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.

(e) ~~(d)~~ At least 21 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

(f) ~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(g) ~~(f)~~ An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(h) ~~(g)~~ A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding

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within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (b) ~~(a)~~ or s. 120.54(3)(b)2.b.; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs shall include:

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(b) ~~(1)(a)~~ and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(h) All documentation, assumptions, methods, and data used in preparing the statement of estimated regulatory costs must be published on a publicly accessible website and, where relevant, in a machine-readable format readily available to the public, including any supporting calculations, documents, data, databases, or data tables, so that the results of the analysis can be replicated. Uncertainties pertaining to these estimates must be reported.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years

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after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision. However, an agency may include longer periods of review but must, at a minimum, provide a cost-benefit analysis that projects the first 5 years after the rule goes into effect. If a discount rate is used in the analysis, its use must be justified. The agency must also provide an analysis without the use of discount rates.

(6)(a) An agency shall conduct a retrospective cost-benefit analysis for each adopted rule 4 years after the rule's effective date. The analysis must compare the actual costs and benefits of the rule to those projected in the initial statement of estimated regulatory costs prepared under paragraph (1)(a).

(b) An agency shall conduct a retrospective assessment report for each adopted rule 8 years after the rule's effective date. The report must compare the initial projected cost-benefit analysis, the retrospective analysis conducted under paragraph (a), and the outcomes observed up to this time. The agency shall incorporate the findings and lessons learned from this comparison into the standards for future statements of estimated regulatory costs and apply them to similar rules.

(c) For all rules in effect on July 1, 2025, the committee must set a schedule for agencies to conduct the analysis and report as required by paragraphs(a)-(b), taking into

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consideration the time and resources agencies will expend to perform such review. These reviews must be scheduled to begin between July 1, 2027 and July 1, 2037.

(d) An amendment to a rule through subsequent rulemaking does not affect the agency's duty to perform the reviews as required by paragraphs(a)-(b), unless the amendment completely repeals and adopts a new rule as described in s. 120.54. In such case, the rule's review dates must be determined based on the effective date of the subsequent rule.

(e) The following rules are exempt from the review processes described in paragraphs(a)-(b):

1. Rules required to comply with federal law or to receive federal funds.

2. Rules adopted pursuant to authority granted under the State Constitution.

3. Rules of agencies that are headed by an elected official.

(f) Rules exempt under paragraph (e) must be reviewed by the agency according to the schedule set by the committee. The agency may not begin its review more than 1 year before the rule’s scheduled review date.

(g) During the review, including any review under paragraph (f), the agency shall:

1. Notify the public of the review, including making the text of the notice, the text of the rule, and all analyses associated with the review available on the agency’s website.

2. Hold a public comment period for at least 30 days.

3. Conduct all analyses that would be required if the rule were being readopted pursuant to s. 120.54.

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4. Provide a reasoned response to unique public comments.

5. Publish a report on the agency's website which includes the analyses and the agency's response to public comments.

Section 4. Paragraphs (m), (n), and (o) are added to subsection (1) of section 120.545, Florida Statutes, to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:

(m) The agency is timely complying with the review requirements described in s.120.541(6)(a)-(b).

(n) The agency has properly reviewed exempt rules as required under s. 120.541(6)(f).

Section 5. Paragraph (a) of subsection (1) of 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, including the effective date of each rule, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or

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authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference

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into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

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

And the title is amended as follows:

Delete lines 20 - 38

and insert:

review for specified purposes; requiring the Joint Administrative Procedures Committee to set a review

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schedule for existing rules to undergo a retrospective cost-benefit analysis and review; providing exceptions to the review; requiring a separate review of such exempt rules; requiring the agency to perform specified actions during reviews; requiring publication of materials used to produce estimates of regulatory costs in a specified manner; providing additional requirements for cost-benefit analyses; amending s. 120.545, F.S.; revising requirements for review of rules by the Administrative Procedures Committee; amending s. 120.55, F.S.; requiring that additional information be published in the Florida Administrative Code; amending s.

By Senator Burgess

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A bill to be entitled

An act relating to administrative procedure; amending s. 120.52, F.S.; specifying that an agency's issuance of a guidance document or other statement interpreting a statute without express statutory delegation to issue such guidance is an invalid exercise of delegated legislative authority; amending s. 120.536, F.S.; prohibiting an agency from adopting a rule or issuing a guidance document without statutory delegation; reenacting and amending s. 120.541, F.S.; requiring an agency to prepare a statement of estimated regulatory costs for proposed rules, notices of change, and final rules; providing requirements for such statements; requiring the agency to conduct a retrospective cost-benefit analysis for each adopted rule after a specified period; providing requirements for such analysis; requiring review of prior cost-benefit analyses as part of a specified review; requiring agencies to use the findings of such a review for specified purposes; requiring publication of materials used to produce estimates of regulatory costs in a specified manner; providing additional requirements for cost-benefit analyses; amending s. 120.545, F.S.; revising requirements for review of rules by the Administrative Procedures Committee; amending s. 120.55, F.S.; requiring that additional information be published in the Florida Administrative Code; providing for the expiration of rules after a specified period unless readopted; providing

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requirements for the readoption process; requiring the Administrative Procedures Committee to set expiration dates for existing rules; providing exceptions to rule expiration; requiring review of such exempt rules; requiring the agency to perform specified actions during reviews; providing for a limited extension of expiration in certain circumstances; amending s. 120.555, F.S.; requiring that specified information be published concerning expired rules; amending s. 120.56, F.S.; specifying that guidance documents are subject to specified provisions; providing that a party subject to an enforcement action may challenge the action on the basis that the agency lacked statutory authority for the rule or guidance document; providing for award of costs and attorney fees; providing for challenges to rules on the grounds that the agency failed to comply with specified provisions; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (8) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(8) "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one

of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; ~~or~~

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or

(g) The agency has issued a guidance document or other statement interpreting a statute without express statutory delegation to issue such guidance.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority

to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

Section 2. Subsection (1) of section 120.536, Florida Statutes, is amended to read:

120.536 Rulemaking authority; repeal; challenge.—

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. An agency may not adopt any rule or issue any guidance document unless the agency has been expressly granted the power to do so by a specific statutory delegation. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers

and duties conferred by the enabling statute.

Section 3. Subsection (1), paragraph (g) of subsection (2), and subsection (5) of section 120.541, Florida Statutes, are amended, paragraph (h) is added to subsection (2) of that section, and subsection (4) of that section is reenacted, to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) An agency shall prepare a statement of estimated regulatory costs for each proposed rule, notice of change, or final rule, regardless of whether the proposed rule, notice of change, or final rule will have an adverse impact on small business or is likely to increase regulatory costs. The statement must include a cost-benefit analysis that clearly demonstrates that the projected benefits of the proposed rule, notice of change, or final rule exceed its projected costs.

(b) ~~(a)~~ Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a

statement of the reasons for rejecting the alternative in favor of the proposed rule.

(c) ~~(b)~~ If a proposed rule, notice of change, or final rule will have an adverse impact on small business or if the proposed rule, notice of change, or final rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(d) ~~(c)~~ The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.

(e) ~~(d)~~ At least 21 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

(f) ~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(g) ~~(f)~~ An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(h) ~~(g)~~ A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (b) ~~(a)~~ or s. 120.54(3)(b)2.b.; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(i) An agency shall conduct a retrospective cost-benefit analysis for each adopted rule 4 years after the rule's effective date. The analysis must compare the actual costs and benefits of the rule to those projected in the initial statement of estimated regulatory costs prepared under paragraph (a).

(j) When a rule is reviewed upon expiration pursuant to s. 120.55(9), the agency shall conduct a retrospective assessment report comparing the initial projected cost-benefit analysis, the retrospective analysis conducted under paragraph (i), and the outcomes observed up to the time of expiration. The agency shall incorporate the findings and lessons learned from this comparison into the standards for future statements of estimated regulatory costs and apply them to similar rules.

(2) A statement of estimated regulatory costs shall include:

(g) In the statement or revised statement, whichever

applies, a description of any regulatory alternatives submitted under paragraph (1)(b) ~~(1)(a)~~ and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(h) All documentation, assumptions, methods, and data used in preparing the statement of estimated regulatory costs must be published on a publicly accessible website and, where relevant, in a machine-readable format readily available to the public, including any supporting calculations, documents, data, databases, or data tables, so that the results of the analysis can be replicated. Uncertainties pertaining to these estimates must be reported.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision. However, an agency may include longer periods of review but must, at a minimum,

provide a cost-benefit analysis that projects the first 5 years after the rule goes into effect. If a discount rate is used in the analysis, its use must be justified. The agency must also provide an analysis without the use of discount rates.

Section 4. Paragraphs (m), (n), and (o) are added to subsection (1) of section 120.545, Florida Statutes, to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:

(m) The rule is scheduled to expire pursuant to s. 120.55(9) and whether the agency is complying with the expiration and readoption requirements.

(n) The initial expiration date for the rule has been set in accordance with s. 120.55(9)(b).

(o) The agency has properly reviewed exempt rules as required under s. 120.55(9)(f).

Section 5. Present subsection (9) of section 120.55, Florida Statutes, is redesignated as subsection (10), a new subsection (9) is added to that section, and paragraph (a) of subsection (1) of that section is amended, to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida

Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, including the effective date and expiration date of each rule, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to

where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(9)(a) All rules adopted by an agency shall expire 8 years

after their effective date unless readopted through the rulemaking process outlined in s. 120.54, except as provided in paragraph (e). The readoption process may not begin more than 1 year before the rule's expiration date.

(b) For all rules in effect on July 1, 2025, the committee shall set the initial expiration dates, taking into consideration the time and resources agencies will expend to potentially readopt those rules. The initial expiration dates must be set between the second and twelfth calendar years after the effective date of this subsection. A rule shall expire on January 1 of the calendar year selected by the committee.

(c) An amendment to a rule through subsequent rulemaking does not affect the rule's expiration date unless the amendment completely repeals and readopts the rule. In such case, the new expiration date must be 8 years from the effective date of the readopted rule.

(d) Every rule, if readopted, must subsequently expire on January 1 every 8 calendar years after its initial expiration date unless reviewed and readopted pursuant to this subsection.

(e) The following rules do not expire:

1. Rules required to comply with federal law or to receive federal funds.

2. Rules adopted pursuant to authority granted under the State Constitution.

3. Rules of agencies that are headed by an elected official.

(f) Rules exempt under paragraph (e) must be reviewed by the agency according to the schedule set by the committee. The agency may not begin its review more than 1 year before the

rule's scheduled review date.

(g) During the review, including any review under paragraph (f), the agency shall:

1. Notify the public of the review, including making the text of the notice, the text of the rule, and all analyses associated with the review available on the agency's website.

2. Hold a public comment period for at least 30 days.

3. Conduct all analyses that would be required if the rule were being readopted pursuant to s. 120.54.

4. Provide a reasoned response to unique public comments.

5. Publish a report on the agency's website which includes the analyses and the agency's response to public comments.

(h) For each rule, the Governor may grant extensions totaling no more than 365 days postponing the expiration date upon a written request by the agency. In the agency's written request, an explanation must be given by the agency explaining why it cannot readopt the rule within the time allotted by this subsection and why the expiration of the rule would harm the public health, safety, or welfare. The Governor must affirm these findings in writing before granting an extension. An extension under this paragraph does not affect subsequent expiration dates. Reviews under paragraph (f) may not be granted extensions.

Section 6. Subsection (6) is added to section 120.555, Florida Statutes, to read:

120.555 Summary removal of published rules no longer in force and effect.—When, as part of the continuous revision system authorized in s. 120.55(1)(a)1. or as otherwise provided by law, the Department of State is in doubt whether a rule

published in the official version of the Florida Administrative Code is still in full force and effect, the procedure in this section shall be employed.

(6) When a rule has expired pursuant to s. 120.55(9), the Department of State shall update the Florida Administrative Code to remove the rule and shall provide historical notes identifying the manner in which the rule ceased to have effect, including the expiration pursuant to s. 120.55(9).

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES.—

(a) Any person substantially affected by a rule, a guidance document, or a proposed rule may seek an administrative determination of the invalidity of the rule or guidance document on the ground that the rule or guidance document is an invalid exercise of delegated legislative authority. All of the provisions in this section apply to guidance documents as well as adopted rules.

(b) The petition challenging the validity of a proposed or adopted rule under this section must state:

1. The particular provisions alleged to be invalid and a statement of the facts or grounds for the alleged invalidity.

2. Facts sufficient to show that the petitioner is substantially affected by the challenged adopted rule or would be substantially affected by the proposed rule.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged,

the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons for his or her decision in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join

the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does not constitute failure to exhaust administrative remedies.

(f) Any party subject to an enforcement action may challenge the enforcement action based solely on the grounds that the agency lacked express statutory authority to adopt the rule or issue a guidance document upon which the enforcement action is based. Any party that prevails on such a challenge shall be entitled to recover reasonable costs and attorney fees.

(g)1. A person may challenge a rule on the grounds that the agency failed to comply with s. 120.541 by:

a. Failing to prepare a statement of estimated regulatory costs as required;

b. Preparing a statement of estimated regulatory costs that does not include all the information required by s. 120.541(2);

c. Failing to make the statement or the underlying data and analysis publicly available as required by s. 120.541(2)(h); or

d. Failing to conduct the retrospective analyses required by s. 120.541(1)(i) and (j).

2. If an administrative law judge finds that the agency has materially failed to comply with s. 120.541, the rule must be declared invalid and void.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A petition alleging the invalidity of a proposed rule shall be filed within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of

estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(e) ~~s. 120.541(1)(d)~~; or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petitioner has the burden to prove by a preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule.

Section 8. This act shall take effect July 1, 2025.