

Tab 1	SB 42 by Stewart ; (Identical to H 00133) Professional Licensing Requirements for Barbers and Cosmetologists
Tab 2	SB 364 by Collins ; (Similar to H 00229) Regulatory Assessment Fees
Tab 3	SB 92 by Hooper ; (Similar to CS/H 00095) Yacht and Ship Brokers' Act
Tab 4	SPB 7006 by RI ; OGSR/Utility Owned or Operated by a Unit of Local Government
Tab 5	SPB 7008 by RI ; OGSR/Department of the Lottery

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Gruters, Chair
Senator Hooper, Vice Chair

MEETING DATE: Wednesday, December 6, 2023
TIME: 8:30—10:30 a.m.
PLACE: James E. "Jim" King, Jr Committee Room, 401 Senate Building

MEMBERS: Senator Gruters, Chair; Senator Hooper, Vice Chair; Senators Bradley, Brodeur, Hutson, Jones, and Osgood

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 42 Stewart (Identical H 133)	Professional Licensing Requirements for Barbers and Cosmetologists; Providing a period of time when a conviction, or any other adjudication, for a crime may not be grounds for denial of licensure as a barber or cosmetologist; providing an exception; requiring the applicable board to approve certain educational program credits offered to inmates in certain institutions or facilities for purposes of satisfying training requirements for licensure as a barber or cosmetologist, etc. RI 12/06/2023 Favorable CJ RC	Favorable Yeas 7 Nays 0
2	SB 364 Collins (Similar H 229)	Regulatory Assessment Fees; Exempting certain rules adopted by the Florida Public Service Commission relating to regulatory assessment fees from the requirement of legislative ratification, etc. RI 12/06/2023 Favorable RC	Favorable Yeas 7 Nays 0
3	SB 92 Hooper (Similar CS/H 95)	Yacht and Ship Brokers' Act; Revising the definition of the term "yacht"; exempting a person who conducts business as a broker or salesperson in another state from licensure in this state for specified transactions; requiring, rather than authorizing, the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to deny licenses for applicants who fail to meet certain requirements, etc. RI 12/06/2023 Favorable AEG FP	Favorable Yeas 7 Nays 0

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Wednesday, December 6, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7006	OGSR/Utility Owned or Operated by a Unit of Local Government; Amending a provision which provides an exemption from public records requirements for certain information held by a utility owned or operated by a unit of local government; amending a provision which provides an exemption from public meetings requirements for certain portions of meetings held by a utility owned or operated by a unit of local government; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
Consideration of proposed bill:			
5	SPB 7008	OGSR/Department of the Lottery; Amending provisions relating to an exemption from public records requirements for certain information held by the Department of the Lottery, information about lottery games, personal identifying information of retailers and vendors for purposes of background checks, and certain financial information held by the department; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 42

INTRODUCER: Senator Stewart

SUBJECT: Professional Licensing Requirements for Barbers and Cosmetologists

DATE: December 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 42 prohibits a regulatory board within the Department of Business and Professional Regulation (DBPR) from considering a criminal conviction, or any other adjudication, for crimes more than three years before the date the application is received by a board, as grounds for denial of a barber or cosmetologist or cosmetology specialist license. However, this prohibition does not apply if the applicant was convicted of a crime at any time during the three-year period immediately preceding the application. Current law prohibits the DBPR’s regulatory boards from considering a conviction, or any other adjudication, as an impairment to licensure for a crime more than five years before an application is received by a board.

Under current law and the bill, a DBPR regulatory board may consider a criminal background older than three years if the background includes a sexual predator crime under s. 775.21, F.S., or a forcible felony under s. 776.08, F.S., or is related to the profession’s practice.

The bill requires the DBPR’s regulatory boards to approve education program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for the purpose of satisfying applicable training requirements for licensure as a barber or cosmetologist.

The bill takes effect on July 1, 2024.

II. Present Situation:

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 11 divisions tasked with the regulation of several professions and businesses.¹

Division of Professions

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.² The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”³ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁴

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁵

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.⁶

In Fiscal Year 2021-2022, there were 506,210 active licensees in the Division of Professions, including:⁷

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (27,073 active and 97 inactive);⁸

¹ See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Professions; Real Estate; Regulation; Service Operations; and Technology.

² See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

³ Section 455.201(2), F.S.

⁴ *Id.*

⁵ Section 455.201(4)(b), F.S.

⁶ Section 455.01(4) and (5), F.S.

⁷ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%202021-22.pdf> (last visited Nov. 27, 2023).

⁸ *Id.*

- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists (281,228 active and 1,295 inactive);⁹
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁰

Barbering

The term “barbering” in ss. 476.014 through 476.254, F.S. (the Barbers’ Act) includes any of the following practices when done for payment: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.¹¹

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and
- Have held an active valid license in another state for at least one year,¹² or have a minimum of 900 hours of specified training.¹³

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.¹⁴

⁹ *Id.*

¹⁰ Section 455.219(1), F.S.

¹¹ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

¹² Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. See s. 476.144(5), F.S.

¹³ See s. 476.114(2), F.S. The training must include, but is not limited to, the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

¹⁴ See s. 476.144(6), F.S.

Cosmetology

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. The Board of Cosmetology, within the DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.¹⁵

A "cosmetologist" is a person who is licensed to engage in the practice of cosmetology.¹⁶ "Cosmetology" is "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."¹⁷

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.¹⁸ In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.¹⁹

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours of training, including completion of an education at an approved cosmetology school or program.²⁰

A "specialist" is "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."²¹ The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

¹⁵ See Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Nov. 27, 2023).

¹⁶ See s. 477.013(3), F.S.

¹⁷ See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist.

¹⁸ See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

¹⁹ See s. 477.0135(6), F.S.

²⁰ See ss. 477.019(2) and (4), F.S.

²¹ See s. 477.013(5), F.S.

- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”²²

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and
- Submit an application for registration to the DBPR with the registration fee.²³

Licensing and Criminal Background

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.²⁴ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant’s lack of civil rights.²⁵

License Applicant’s Criminal Background

The DBPR’s regulatory boards, or the DBPR if there is no board, may deny a license application for any person whom it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession’s practice act.²⁶ Specifically, the regulatory board, or the DBPR if there is no board, may deny a license application for any person having been:

convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee’s profession.²⁷

Chapter 476, F.S., relating to barbers, and ch. 477, F.S., for cosmetology, do not directly reference the criminal background of an applicant as a basis for a license denial. These practice acts reference the criminal background provisions in s. 455.227(1), F.S., as a basis for a license denial.²⁸

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

²² See s. 477.013(6), F.S.

²³ See s 477.0201, F.S.

²⁴ Section 112.011(1)(b), F.S.

²⁵ Section 112.011(1)(c), F.S.

²⁶ Section 455.227(2), F.S.

²⁷ Section 455.227(1)(c), F.S.

²⁸ See s. 476.204(1)(h), F.S., relating to barbers, and s. 477.029(1)(h), F.S., relating to cosmetology.

However, s. 455.213(3), F.S., limits the period for which a regulatory board may consider an applicant's criminal conviction,²⁹ or any other adjudication, as an impairment to licensure to five years before an application is received by a board. A regulatory board may consider a criminal conviction or other adjudication older than five years if the background:

- Includes a sexual predator crime under s. 775.21, F.S., or a forcible felony under s. 776.08, F.S.; or
- Is related to the profession's practice.

The DBPR's boards must list on their websites the crimes that, if committed by an applicant, do not impair a person's qualifications for licensure, and update the list annually. Beginning October 1, 2019, the boards were required to compile a list of crimes that, although reported by a license applicant, are not used as a basis for denial. The list must identify the crime reported and the date of conviction, finding of guilt, plea, or adjudication entered, or the date of sentencing for each such license application.³⁰

Each DBPR board must also compile a list of crimes that have been used as a basis for a license denial during the previous two years. Starting October 1, 2019, with quarterly updating, the boards must compile a list indicating each crime used as a basis for a license denial. For each crime listed, the board must identify the date of conviction, finding of guilt, plea, or adjudication entered, or date of sentencing. Such denials must be available to the public upon request.³¹

Section 455.213, F.S., also:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision;³²
- Requires a licensing agency to permit an applicant who is incarcerated or under supervision to appear by teleconference or video conference at a board or agency license application hearing;³³ and
- Requires the Department of Corrections to cooperate and coordinate with the board or agency to facilitate the applicant's hearing appearance in person, by teleconference, or by video conference.³⁴

Vocational Training in Correctional Facilities

The Florida Department of Corrections Bureau of Education partners with state colleges, technical colleges, and community education organizations to provide vocational training in 37

²⁹ Section 455.213(3)(b)1., F.S., defines the term "conviction" to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

³⁰ Section 455.213(3)(d), F.S. The Barber's Board and the Board of Cosmetology have posted this information on the DBPR's website. The information for each profession is under the "Apply for a License" below the heading "Prior Criminal Offenses" at the following Internet links. See, the Barber's Board, <http://www.myfloridalicense.com/DBPR/barbers/#apply> (last visited Nov. 27, 2023). See, the Board of Cosmetology, <http://www.myfloridalicense.com/DBPR/cosmetology/#apply> (last visited Nov. 27, 2023).

³¹ Section 455.213(3)(e), F.S., and *Id.*

³² Section 455.213(3)(c)1., F.S.

³³ Section 455.213(3)(c)2., F.S.

³⁴ Section 455.213(3)(c)3. and 4., F.S.

trades to incarcerated inmates.³⁵ Included in these vocational programs are barbering programs at Blackwater River Correctional Facility,³⁶ Graceville Correctional Facility,³⁷ and Lake City Correctional Facility,³⁸ as well as cosmetology programs at Lowell Correctional Institution,³⁹ Homestead Correctional Institution,⁴⁰ and Gadsden Correctional Facility.⁴¹

III. Effect of Proposed Changes:

The bill amends s. 455.213(3), F.S., to prohibit a regulatory board within DBPR from considering a criminal conviction, or any other adjudication, for crimes more than three years before the date of application is received by a board as grounds for denial of a barber or cosmetologist or cosmetology specialist license, unless the applicant was convicted of a crime at any time during the three-year period immediately preceding the application.

Under the bill and current law, a DBPR regulatory board may consider a criminal background older than three years if the background includes a sexual predator crime under s. 775.21, F.S., or a forcible felony under s. 776.08, F.S., or is related to the profession's practice.

The bill requires boards to approve education program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for the purpose of satisfying applicable training requirements for licensure as a barber or cosmetologist.

The bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁵ Florida Department of Corrections, Bureau of Education, <http://www.dc.state.fl.us/development/programs.html> (last visited Nov. 27, 2023).

³⁶ Florida Department of Corrections, *Blackwater River Correctional Facility*, <http://www.dc.state.fl.us/ci/185.html> (last visited Nov. 27, 2023).

³⁷ Florida Department of Corrections, *Graceville Correctional Facility*, <http://www.dc.state.fl.us/ci/159.html> (last visited Nov. 27, 2023).

³⁸ Florida Department of Corrections, *Lake City Correctional Facility*, <http://www.dc.state.fl.us/ci/219.html> (last visited Nov. 27, 2023).

³⁹ Florida Department of Corrections, *Lowell Correctional Institution*, <http://www.dc.state.fl.us/ci/314.html> (last visited Nov. 27, 2023).

⁴⁰ Florida Department of Corrections, *Homestead Correctional Institution*, <http://www.dc.state.fl.us/ci/419.html> (last visited Nov. 27, 2023).

⁴¹ Florida Department of Corrections, *Gadsden Correctional Facility*, <http://www.dc.state.fl.us/ci/111.html> (last visited Nov. 27, 2023). This facility also has on-site testing by the Board of Cosmetology.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some persons who have a criminal conviction, or other adjudication, that is for a crime committed more than three years before the license application may be able to qualify for a barber or cosmetologist license.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR notes that some correctional training programs are already accepted for licensure purposes. The DBPR questions whether the correctional training programs and vocation training programs referenced in the bill must meet the same training requirements that non-correctional training programs have to meet. However, the DBPR states that its regulatory boards would treat the programs the same without further direction from the legislature.⁴²

VIII. Statutes Affected:

This bill substantially amends section 455.213 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.

⁴² See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 42* (Nov. 1, 2023) (on file with the Senate Regulated Industries Committee).

B. Amendments:

None.

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

By Senator Stewart

17-00221-24

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1 A bill to be entitled
 2 An act relating to professional licensing requirements
 3 for barbers and cosmetologists; amending s. 455.213,
 4 F.S.; providing a period of time when a conviction, or
 5 any other adjudication, for a crime may not be grounds
 6 for denial of licensure as a barber or cosmetologist;
 7 providing an exception; requiring the applicable board
 8 to approve certain educational program credits offered
 9 to inmates in certain institutions or facilities for
 10 purposes of satisfying training requirements for
 11 licensure as a barber or cosmetologist; providing an
 12 effective date.

13

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

15

16 Section 1. Paragraph (b) of subsection (3) of section
 17 455.213, Florida Statutes, is amended, paragraph (f) is added to
 18 that subsection, and paragraph (a) of that subsection is
 19 republished, to read:

20 455.213 General licensing provisions.—

21 (3) (a) Notwithstanding any other law, the applicable board
 22 shall use the process in this subsection for review of an
 23 applicant's criminal record to determine his or her eligibility
 24 for licensure as:

25 1. A barber under chapter 476;
 26 2. A cosmetologist or cosmetology specialist under chapter
 27 477;
 28 3. Any of the following construction professions under
 29 chapter 489:

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

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30 a. Air-conditioning contractor;
 31 b. Electrical contractor;
 32 c. Mechanical contractor;
 33 d. Plumbing contractor;
 34 e. Pollutant storage systems contractor;
 35 f. Roofing contractor;
 36 g. Sheet metal contractor;
 37 h. Solar contractor;
 38 i. Swimming pool and spa contractor;
 39 j. Underground utility and excavation contractor; or
 40 k. Other specialty contractors; or

41 4. Any other profession for which the department issues a
 42 license, provided the profession is offered to inmates in any
 43 correctional institution or correctional facility as vocational
 44 training or through an industry certification program.

45 (b)1. A conviction, or any other adjudication, for a crime
 46 more than 3 years before the date the application is received by
 47 the applicable board may not be grounds for denial of a license
 48 specified in subparagraph (a)1. or subparagraph (a)2. unless the
 49 applicant was convicted of a crime at any time during the 3-year
 50 period immediately preceding the application. A conviction, or
 51 any other adjudication, for a crime more than 5 years before the
 52 date the application is received by the applicable board may not
 53 be grounds for denial of a license specified in subparagraph
 54 (a)3. or subparagraph (a)4 ~~paragraph (a)~~. For purposes of this
 55 paragraph, the term "conviction" means a determination of guilt
 56 that is the result of a plea or trial, regardless of whether
 57 adjudication is withheld. This paragraph does not limit the
 58 applicable board from considering an applicant's criminal

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59 history that includes a crime listed in s. 775.21(4)(a)1. or s.
60 776.08 at any time, but only if such criminal history has been
61 found to relate to the practice of the applicable profession.

62 2. The applicable board may consider the criminal history
63 of an applicant for licensure under subparagraph (a)3. if such
64 criminal history has been found to relate to good moral
65 character.

66 (f) The applicable board shall approve educational program
67 credits offered to inmates in any correctional institution or
68 correctional facility as vocational training or through an
69 industry certification program for purposes of satisfying
70 applicable training requirements for licensure in a profession
71 under subparagraph (a)1. or subparagraph (a)2.

72 Section 2. This act shall take effect July 1, 2024.



The Florida Senate

Committee Agenda Request

To: Senator, Chair Gruters
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: October 18, 2023

I respectfully request that **Senate Bill #42**, relating to Professional Licensing Requirements for Barbers and Cosmetologists, be placed on:

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

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

Senator Linda Stewart
Florida Senate, District 17

Florida Senate Committee on Regulated Industries

Written Testimony: Dr. Darwyn Deyo, PhD and Dr. Edward J. Timmons, PhD

Chair Gruters, Vice Chair Hooper, and members of the Senate Committee on Regulated Industries:

My name is Dr. Darwyn Deyo. I am an associate professor of economics at San José State University and a senior research fellow with the Knee Regulatory Research Center at West Virginia University, in which roles I research the effects of occupational regulation. I am writing today about the costs to everyday Floridians from collateral consequences for occupational licensing.

The three main takeaways from my testimony are as follows:

- Florida is currently one of the most burdensome states for occupational licensing and collateral consequences make it even harder for people to get to work.
- Economics research has found that higher licensing barriers are associated with higher recidivism rates, so SB 42 could improve both economic freedom and public safety.
- SB 42 would reduce licensing delays and let aspiring workers work in the meantime instead of repeating training they have already received.

Occupational licensing is a government permission slip to work

We have all gone to the D.M.V. and been frustrated. Renewing your driver's license can be stressful, and you always end up waiting there longer than you expected. Licensing requirements can make aspiring workers wait years and spend thousands of dollars before they have permission to pursue their dreams – with no guarantees of getting the license even after they complete mandatory requirements. It would be like if the D.M.V. decided – after you had spent all day waiting – to send you home empty-handed even after you passed your driving test. Like driving without a license, working without an occupational license can lead to criminal penalties. Florida is currently one of the most burdensome states for occupational licensing, according to the 2022 License to Work report from the Institute for Justice, and licenses dozens of blue-collar occupations that make it harder for people to get to work.

Collateral consequences for occupational licensing create even more government barriers to work and prosperity by making people pay twice for the same offense. Prohibitions on double jeopardy prevent people from having to continually defend themselves against the same charge, but collateral consequences mean that people keep having to pay for their offense – even if it was only an arrest that did not result in a conviction. This creates insurmountable burdens for most people simply trying to start over, especially after they have already paid a fine or were incarcerated. Working in a licensed occupation without the license could even send someone back to prison, even if they did nothing to jeopardize public safety.

SB 42 creates opportunities for Floridians residents and supports families

Florida has lagged behind the movement to reform collateral consequences for occupational licensing, although the state legislature considered more general reforms last year in SB 1124

and HB 1443. The state legislature reduced some burdens and removed two licenses in 2020 with HB 1193, with no evidence of public safety disasters following the reform. This year, SB 42 offers another step in the right direction for aspiring barbers and cosmetologists.

Florida imposes more burdensome collateral consequences for its residents than its neighbor Georgia and most other states, worsening economic freedom in Florida. It allows licensing agencies to deny people licenses to work in occupations even when their criminal offense took place a long time ago or was an isolated incident, and even allows licensing agencies to consider arrest records. This violates the most basic due process clauses in the U.S. Constitution and restricts the liberty of people trying to work in their chosen profession and support their families. If Floridians cannot find work in their home state, they could normally go find work in another state – but people on probation generally have their economic mobility restricted as well. Separating families by making parents seek work further and further away from their communities also splits up families, and economics research has found that higher licensing barriers are associated with higher recidivism rates, as people try to support themselves the only way they can. Reducing licensing barriers by reducing collateral consequences has the potential to improve the lives of Floridians and general public safety.

SB 42 improves collateral consequences for aspiring barbers and cosmetologists in two ways. First, it would limit licensing agencies' review of criminal records to 3 years for barbers and cosmetologists, down from 5 years for other occupations in the statute. This would reduce the amount of time people would be barred from working in their chosen occupation, especially if they already received training while in prison.

In addition to reducing the amount of time people have to wait before they can become licensed barbers and cosmetologists, SB 42 would also require licensing agencies to recognize educational program credits offered to inmates in prison as vocational training or through industry certification as satisfying the training requirements for barbers and cosmetologists. Not recognizing training that the state permits in prisons is an Orwellian standard that the Florida legislature could resolve for these occupations, as well as many others. SB 42 would also allow aspiring workers to spend the waiting period working instead of repeating training they have already received.

Despite some improvements in the last few years, collateral consequences for licensing continue to raise costs and delay dreams for hard-working Floridians. Further collateral consequence reform, that has already been successfully implemented in other states, will not jeopardize public safety but can instead improve economic prosperity in Florida.

Darwyn Deyo, PhD
Associate Professor of Economics, San José State University
Senior Research Fellow, Knee Regulatory Research Center

Edward J. Timmons, PhD
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ANALYSIS

2024 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	SB 42
BILL TITLE:	Professional Licensing Requirements for Barbers and Cosmetologists
BILL SPONSOR:	Sen. Stewart
EFFECTIVE DATE:	07/01/2024

COMMITTEES OF REFERENCE

1) Regulated Industries
2) Criminal Justice
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Regulated Industries

SIMILAR BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION

BILL NUMBER:	HB 489
SPONSOR:	Rep Chambliss, Rep. Plakon
YEAR:	2023
LAST ACTION:	Died on Second Reading Calendar

IDENTICAL BILLS

BILL NUMBER:	HB 133
SPONSOR:	Rep. Chambliss, Rep. Plakon

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	11/1/2023
LEAD AGENCY ANALYST:	Jeff Kelly, Director, Division of Professions
ADDITIONAL ANALYST(S):	Tracy Dixon, Division of Service Operations Robin Jordan, Division of Technology Robert Ehrhardt, OGC Rules
LEGAL ANALYST:	Brande Miller, Deputy General Counsel - Professions

FISCAL ANALYST:

Garrett Blanton, Office of Planning and Budget

POLICY ANALYSIS**1. EXECUTIVE SUMMARY**

The bill revises the time period when a conviction, or any adjudication, for crimes that may not be grounds for denial of licensure as a barber or cosmetologist.

The bill requires applicable boards to approve certain education program credits offered to inmates in certain institutions or facilities as vocational training or through an industry certification program to satisfy training requirements for licensure as a barber or cosmetologist.

2. SUBSTANTIVE BILL ANALYSIS**1. PRESENT SITUATION:**

Chapter 455, Florida Statutes (FS), applies to the regulation of professions by the Department of Business and Professional Regulation. Subsection 455.01, FS, defines “profession” as any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulations.

Subsection 455.227(2), FS, as well as the practice acts for each of the professions, provides a board, or the department where there is no board, the discretion to refuse to certify, or certify with restrictions, an application for a license on several grounds, including being convicted of a crime that relates to the practice of, or the ability to practice, a profession. A board or the department where there is no board, reviews the criminal history of applicants on a case-by-case basis and such review is done in the interest of public health, safety, and welfare. Applicants for all professions are required to answer questions pertaining to their criminal history when submitting an application for licensure.

Subsection 455.213(3), FS, specifies that, notwithstanding any other law, the Board of Cosmetology, Barbers’ Board, Construction Industry Licensing Board, and Electrical Contractors’ Licensing Board, shall use the process specified in this subsection for review of an applicant’s criminal record. The current process of review prohibits these boards from considering convictions for crimes more than five years before the date of application as ground for denial of licensure. However, the department or applicable board may consider an applicant’s criminal history that includes crimes listed in subsection 775.21(4)(a)1., FS, (also known as the Florida Sexual Predators Act), or section 776.08, FS, (which defines “Forcible Felonies”) at any time if such criminal history has been found to relate to the practice of the profession, and any criminal history if it has been found to relate to good moral character if the applicable practice act requires such as standard.

Subsection 455.213(3)(c), FS, states that a person may apply for a license before his or her lawful release from confinement or supervision and prohibits that applicable board from denying an application for a license solely on the basis of the applicant’s current confinement or supervision. However, after a license application is approved, the applicable board may stay the issuance of a license until the applicant is lawfully released from confinement or supervision and the applicant notifies the board of such release.

Subsection 455.213(3)(c), FS, further provides that applicants under confinement or supervision must be permitted by the applicable board to appear via teleconference or video conference, and that the Department of Corrections and the applicable board shall cooperate and coordinate the appearance of such applicants at such hearings.

Chapter 455, Florida Statutes (FS), applies to the regulation of professions by the Department of Business and Professional Regulation. Subsection 455.01, FS, defines “profession” as any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulations.

Subsection 455.227(2), FS, as well as the practice acts for each of the professions, provides a board, or the department where there is no board, the discretion to refuse to certify, or certify with restrictions, an application for a license on several grounds, including being convicted of a crime that relates to the practice of, or the ability to practice, a profession. A board or the department where there is no board, reviews the criminal history of applicants on a case-by-case basis and such review is done in the interest of public health, safety, and welfare. Applicants for all

professions are required to answer questions pertaining to their criminal history when submitting an application for licensure.

Subsection 455.213(3), FS, specifies that, notwithstanding any other law, the Board of Cosmetology, Barbers' Board, Construction Industry Licensing Board, and Electrical Contractors' Licensing Board, shall use the process specified in this subsection for review of an applicant's criminal record. The current process of review prohibits these boards from considering convictions for crimes more than five years before the date of application as ground for denial of licensure. However, the department or applicable board may consider an applicant's criminal history that includes crimes listed in subsection 775.21(4)(a)1., FS, (also known as the Florida Sexual Predators Act), or section 776.08, FS, (which defines "Forcible Felonies") at any time if such criminal history has been found to relate to the practice of the profession, and any criminal history if it has been found to relate to good moral character if the applicable practice act requires such as standard.

Subsection 455.213(3)(c), FS, states that a person may apply for a license before his or her lawful release from confinement or supervision and prohibits that applicable board from denying an application for a license solely on the basis of the applicant's current confinement or supervision. However, after a license application is approved, the applicable board may stay the issuance of a license until the applicant is lawfully released from confinement or supervision and the applicant notifies the board of such release.

Subsection 455.213(3)(c), FS, further provides that applicants under confinement or supervision must be permitted by the applicable board to appear via teleconference or video conference, and that the Department of Corrections and the applicable board shall cooperate and coordinate the appearance of such applicants at such hearings.

Subsection 476.114, FS, requires applicants requiring to be licensed as barbers to have received 900 hours of training from a school of barbering licensed pursuant to chapter 1005, a barbering program within the public school system, or a government-operated barbering program in the state.

Subsection 477.019, FS, requires applicants requiring to be licensed as cosmetologists to have received 1,200 hours of training from either a school of cosmetology licensed pursuant chapter 1005, a cosmetology program with the public school system, the Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated barbering program in the state.

Subsection 489.111(2)(b), FS, which pertains to the Construction Industry Licensing Board, requires that any person desiring to be certified shall be of good moral character.

Subsection 489.111(3), FS, specifies that the Construction Industry Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if there is a substantial connection between the lack of good moral character and the professional responsibility of the certified contractor; and the lack of good moral character is supported by clear and convincing evidence.

Subsection 489.111, FS, also requires that any person desiring to be certified shall meet certain requirements, including either a baccalaureate degree from an accredited 4-year college, four years of active experience, or a combination of college and experience.

Subsection 489.511(1)(b)1., FS, which pertains to the Electrical Contractors' Licensing Board, requires that any person desiring to be licensed as a contractor shall be of good moral character.

Subsection 489.511(3)(a), FS, defines good moral character as a history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation and specifies that the Electrical Contractors' Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if certain requirements are met.

Subsection 489.511(1)(b)3. c., FS, also requires that any person desiring to be certified shall have 6 years of experience within the last 12 years, this provision allows for comprehensive training, and technical education to be used to meet experience requirements.

2. EFFECT OF THE BILL:

Section 1.

The bill amends subsection 455.213(3), FS, to prohibit convictions, or any other adjudication, for crimes more than three (3) years before the date of application is received from being used as grounds for denial of a license for a barber or cosmetologist (subparagraphs 455.213(3)(a)1. or (3)(a)2., F.S.) unless the applicant was convicted of a crime at any time during the 3-year period immediately preceding application.

The bill amends subparagraph 455.213(3)(b)1., F.S. to provide that a conviction, or any other adjudication, for a crime more than 5 years before the date the application is received by the applicable board may not be grounds for denial of a license specified for the professions listed solely in subparagraphs 455.213(3)(a)3. or (3)(a)4., F.S. (Construction Industry Licensing Board and Electrical Contractors' Licensing Board).

The bill amends subsection 455.213(3), FS, and creates a new paragraph (f) to require applicable boards to approve education program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for the purpose of satisfying applicable training requirements for licensure in a profession under subparagraphs 455.213(3)(a)1. or (a)2., (barber or cosmetologist), F.S.

Section 2.

The bill provides for an effective date of July 1, 2024.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y N

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y N

Revenues:	N/A
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y N

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y N

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

Division of Professions: Some correctional training programs are already accepted for licensure purposes. It is not clear as to whether the correctional training programs and vocation training programs mentioned in the bill would have to meet the same training requirements that non-correctional training programs have to meet; however, the boards would treat the programs the same without further direction from the legislature.

OGC Rules: No additional comments.

DSO: The impact to the division is minimal and will be accommodated with existing resources.

Office of Planning and Budget: There is no anticipated fiscal impact.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

No additional comments.

MEMORANDUM

FROM: Reginald D. Dixon, Chief of Staff
Florida Lottery

TO: Patrick L. "Booter" Imhof, Staff Director
Senate Regulated Industries Committee

RE: Overlap between the Public Records Exemptions Covering Cybersecurity

DATE: September 26, 2023

The Lottery was asked to ascertain whether the public records exemption pertaining to cybersecurity in section 119.0725, F.S. (the "Cybersecurity Exemption") covered public records exempted in section 24.1051(1)(a)1.a. – b., F.S (the "Lottery Exemption"). The purpose of this analysis was to determine whether the Lottery Exemption should be amended in a way that would eliminate the overlap with the Cybersecurity Exemption, while maintaining the overall scope of the information exempted under current law. As discussed below, Lottery and Cybersecurity Exemptions arguably cover separate categories of information. Accordingly, the Lottery recommends re-enacting the Lottery Exemption in its current form.

Broadly speaking, there are arguably three categories of information protected by the Cybersecurity Exemption and the Lottery Exemption. The Cybersecurity Exemption covers information that falls into either one of two categories: (1) information pertaining to the technology used by an agency,¹ and (2) information pertaining to actions taken by an agency in response to a cyberattack, such as detecting and investigating cyberattacks.² By contrast, the Lottery Exemption arguably exempts a third category of information, (3) information pertaining to precautions taken to prevent a cyberattack from occurring.³

¹ Section 119.075(2)(b) protects information related to "critical infrastructure" and section 119.0725(2)(d) exempts information pertaining to "network schematics, hardware and software configurations, or encryption information." Arguably this is limited to information about the technology itself.

² Section 119.0725(2)(d) exempts information that "identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents . . ." This information is arguably limited to the actions taken by an agency in response to a cyberattack.

³ Subsection (1)(a)1.a., exempts information related the "security of the [Lottery's] technologies, processes and practices designed to protect networks, computers, data processing software, data, and data systems from attack, damage or unauthorized access," and subsection (1)(a)1.b., exempts information that would reveal physical or virtual security measures taken by the Lottery. Arguably, these exemptions emphasize precautionary measures designed to prevent cyberattacks, as opposed to information about the specific technology used by the Lottery, or the methods used to respond to a cyberattack. Moreover, subsection (1)(a)1.b., arguably goes beyond the prevention of cyberattacks and extends to Lottery security more generally.

Admittedly, there is possibly some overlap between these three categories. For example, information about the technology used by an agency could identify actions that would be taken in response to a cyberattack, or precautionary measures taken to prevent one. Likewise, information pertaining to precautionary measures could reveal information about how an agency would respond to a cyberattack, and vice versa. However, by and large, the three categories identified above are arguably geared toward protecting different kinds of information. *See generally* the State Cybersecurity Act, § 282.318, F.S. (separately addressing “protection procedures,” “detection processes” and “response and recovery protocols”).

Because there appears to be a reasonable argument that the Lottery and Cybersecurity Exemptions cover different categories of information, the Lottery recommends the Lottery re-enacting the Lottery Exemption in its current form.

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 Regulated Industries

BILL: SB 364

INTRODUCER: Senator Collins

SUBJECT: Regulatory Assessment Fees

DATE: December 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	<u>FAV</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 364 amends s. 120.80, F.S., to specify certain rules that may be adopted by the Florida Public Service Commission without being subject to potential rule ratification under s. 120.541(3), F.S. Specifically, rules regarding the Florida Public Service Regulatory Trust Fund and the regulatory assessment fees charged to utilities in Florida are added to the section. The bill also deletes a temporary provision, limited to the 2023-2024 fiscal year, that allowed such rules to be exempt from all provisions of s. 120.80, F.S, which includes requirements to provide statements of estimated regulatory costs.

The bill is effective upon becoming a law.

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.¹ The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.² In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.³

¹ Section 350.001, F.S.

² See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Nov. 30, 2023).

³ Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Nov. 30, 2023).

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid⁴ and may order the addition or repair of infrastructure as necessary.⁵ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.⁶ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁷ Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a “municipal utility,” variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.⁸ Florida also has 27 municipally-owned gas utilities and four special gas districts.⁹

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.¹⁰ These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.¹¹ Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.¹²

⁴ Section 366.04(5) and (6), F.S.

⁵ Section 366.05(1) and (8), F.S.

⁶ Section 366.05, F.S.

⁷ Florida Public Service Commission, *About the PSC*, *supra* note 3.

⁸ Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Nov. 30, 2023).

⁹ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf>).

A “special gas district” is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.”

¹⁰ Florida Electric Cooperative Association, *Members*, <https://feca.com/members/> (last visited Nov. 30, 2023).

¹¹ Florida Electric Cooperative Association, *Our History*, <https://feca.com/our-history/> (last visited Nov. 30, 2023).

¹² *Id.*

Public Electric and Gas Utilities in Florida

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).¹³ In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.¹⁴

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.¹⁵

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.¹⁶

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation."¹⁷ The PSC also does not regulate utilities in counties that are exempt from PSC regulation pursuant to s. 367.171, F.S.

¹³ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 9, at 5.

¹⁴ *Id.* at 14. Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.

¹⁵ PSC, *2022 Annual Report*, p. 6, (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf>) (last visited: Nov. 30, 2023).

¹⁶ *Id.*

¹⁷ Section 367.022(2), F.S.

As of March, 2023, the PSC has over 149 water, wastewater, and water and wastewater utilities that are under its regulatory authority.¹⁸

Telecommunications Carriers

Under ch. 364, F.S., telecommunications carriers in Florida are also subject to only limited PSC regulation. During the 2011 legislative session, the “Regulatory Reform Act” (act) was passed and signed into law by the Governor, effective July 1, 2011.¹⁹ Under the act, the Legislature eliminated most of the PSC’s jurisdiction over telecommunications. However, the PSC still:

- Maintains the authority to ensure that incumbent local exchange carriers meet their obligation to provide unbundled access, interconnection, and resale to competitive local exchange companies in a nondiscriminatory manner;
- Administers the system to provide Telecommunications Relay Services; and
- Oversees the Federal Lifeline Assistance program for Florida.²⁰

Natural Gas Transmission

Natural gas transmission companies are regulated by the PSC under ch. 368, F.S. The term “natural gas transmission company,” as defined in s. 368.103, F.S., “means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas.” The term does not include “any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof, or a special district created by special act to distribute natural gas.” Section 364.104, F.S., authorizes the PSC to “fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for:”

- Determining customers and services classifications;
- Determining rate applicability; and
- “Ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory.”

Section 368.105, F.S., provides the procedures for the PSC to set rates and services requirements for natural gas transmission companies in Florida.

Under chapter 368, F.S., the PSC is authorized to inspect intrastate natural gas systems to ensure compliance with rules and regulations regarding safety standards.²¹ Currently, Florida has 3 major pipelines: Florida Gas Transmission Company, Gulfstream Natural Gas System, and Sabal Trail Interstate Pipeline. The state also has two minor pipelines: Gulf South Pipeline Company and Southern Natural Gas.²²

¹⁸ Email from Mark Futrell, Deputy Executive Director—Technical, Florida Public Service Commission, to Senate Regulated Industries Staff (Mar. 19, 2023)(on file with the Senate Regulated Industries Committee).

¹⁹ Ch. 2011-36, Laws of Fla.

²⁰ Florida Public Service Commission, *About the PSC*, supra note 3.

²¹ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, supra note 9, at 13.

²² *Id.*

Regulatory Assessment Fees

The PSC collects Regulatory Assessment Fees (RAFs) from all of the utilities under its jurisdiction. RAFs, license fees, other fees, and any other charges collected by the PSC are credited to the Florida Public Service Regulatory Trust Fund (PSC Trust Fund).²³ Florida law generally directs the PSC to manage its trust fund in such a manner that each utility industry funds its own regulation.²⁴ Thus, the RAF rate for each industry is designed to correlate with the complexity and cost of regulating that industry. The PSC's budget is set annually by the Legislature, as approved by the Governor. However, the operations of the PSC are funded from the PSC Trust Fund as appropriated in the General Appropriation Act approved by the Legislature. The PSC does not receive any funding from the General Revenue Fund.²⁵

Water and wastewater utilities can include the cost of RAFs utilizing the “pass-through” provisions in s. 367.081(4)(b), F.S. This provision allows utilities to revise their rates automatically to account for changes in certain specified expenses (such as RAFs, certain governmental fees and permitting costs, and taxes). A utility using this provision must provide verified notice to the PSC 45 days prior to the implementation of the increase or decrease. The electric and gas utility industries do not have a similar “pass-through” provision.

Rates for RAFs are set by PSC rule, subject to maximum rates established by statute. RAFs are charged as a percentage of gross operating revenues derived from intrastate business, subject to certain exclusions. Chart 1 below provides the current RAFs for Florida utilities, by industry.

²³ Section 350.113, F.S.

²⁴ Specifically:

- Section 364.336(2) and (3), F.S., requires the PSC to reduce the RAFs for the telecommunications industry after the Regulatory Reform Act of 2011 to reflect the PSC's reduced regulatory oversight of that industry;
- Section 367.145(3), F.S., requires that RAFs collected pursuant to the water and wastewater RAF collection authorization may only be used to cover the cost of regulating water and wastewater systems. Also, fees collected under the electricity utility industry, gas utility industry, and telecommunications industry RAF collection authorizations may not be used to pay for the cost of water and wastewater regulation; and
- Section 368.109, F.S., states that the RAFs set by the PSC for the natural gas transmission (i.e. natural gas pipeline) industry must, to the extent practicable, be related to the cost of regulating that industry.

²⁵ Florida Public Service Commission, *Bill Analysis for SB 364*, Nov. 9, 2023 (on file with the Senate Regulated Industries Committee).

Chart 1: Regulatory Assessment Fees by Florida Utility Industry

Utility Type	Current RAF	Statutory Maximum
Investor-owned Gas Utilities	0.5% ²⁶	0.5% ²⁷
Municipal Gas Utilities and Gas Districts	0.1919% ²⁸	0.25% ²⁹
Natural Gas Transmission	0.25% ³⁰	0.25% ³¹
Telecommunications Companies	0.16% ³²	0.25% ³³
Water and Wastewater Utilities	4.5% ³⁴	4.5% ³⁵
Investor-owned Electric Utilities	0.072% ³⁶	0.125% ³⁷
Municipal Electric Utilities and Rural Electric Cooperatives	0.015625% ³⁸	0.015625% ³⁹

In its analysis of the bill, the PSC points out that the Legislature has granted rule ratification exemptions “for certain agency rules where ratification would be redundant and unnecessary because of the presence of one or more compelling legislative policy factors.”⁴⁰ These factors may include:

²⁶ Fla. Admin. Code R. 25-7.0131.

²⁷ Section 366.14, F.S.

²⁸ Fla. Admin. Code R. 25-7.0131.

²⁹ Section 366.14, F.S.

³⁰ Fla. Admin. Code R. 25-7.101.

³¹ Section 368.109, F.S.

³² Fla. Admin. Code R. 25-4.0161.

³³ Section 364.336, F.S.

³⁴ Fla. Admin. Code R. 25-30.120.

³⁵ Section 367.145, F.S.

³⁶ Fla. Admin. Code R. 25-6.0131. On September 12, 2023, the PSC published Notices of Development of Proposed Rules and Negotiated Rulemakings regarding this rule for the purpose of updating RAFs for investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives, *see* 49.177 Fla. Admin. Reg. 3329 (Sep. 12, 2023) (available at: https://www.flrules.org/Gateway/View_Notice.asp?ID=27528132).

³⁷ Section 366.14, F.S.

³⁸ Fla. Admin. Code R. 25-6.0131, (2013). On September 12, 2023, the PSC published Notices of Development of Proposed Rules and Negotiated Rulemakings regarding this rule for the purpose of updating RAFs for investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives, *see* 49.177 Fla. Admin. Reg. 3329 (Sep. 12, 2023) (available at: https://www.flrules.org/Gateway/View_Notice.asp?ID=27528132).

³⁹ Section 366.14, F.S.

⁴⁰ Florida Public Service Commission, *Bill Analysis for SB 364*, *supra* note 25.

- The existence of comprehensive statutory control over the rule’s subject matter, including detailed guidance for agency rulemaking;
- The presence of direct oversight or engagement by the Legislature or the public through another process;
- That public policy would be frustrated by unnecessary delays in the rulemaking process; and
- That the Legislature clearly intends, understands, or makes explicit the regulatory cost in the enabling legislation.⁴¹

For RAFs, as shown above, each statute authorizing the PSC to charge RAFs includes a statutory cap on what the PSC can charge. The maximum RAFs that could be charged by the PSC are subject to statutory control of the maximum fiscal impact.

Rulemaking Authority and Legislative Ratification

A rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”⁴² Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.⁴³ An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.⁴⁴ The statutory authority for rulemaking must be specific enough to guide an agency’s rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴⁵

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.⁴⁶ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency’s statement of estimated regulatory costs procedures (SERC), if one is prepared.⁴⁷

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁴⁸

⁴¹ *Id.*, citing Eric H. Miller & Donald J. Rubottom, *Legislative Rule Ratification: Lessons from the First Four Years*, 89-FEB FLA. B.J., 36 (2015).

⁴² Section 120.52(16), F.S.

⁴³ Section 120.52(17), F.S.

⁴⁴ *See* ss. 120.52(8) and 120.536, F.S.

⁴⁵ *See Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁴⁶ *See* ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁴⁷ Section 120.54(3)(a)1., F.S.

⁴⁸ *See* ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

SERC and Rule Ratification Requirements

Pursuant to s. 120.541, F.S., agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.⁴⁹

A SERC must include estimates of the following:

- The number of people and entities affected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁵⁰

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,⁵¹ productivity, or innovation; or
- Regulatory costs, including any transactional costs.⁵²

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect (unless such rule is otherwise exempted from this requirement by statute).⁵³

Current Public Service Commission Exemptions to SERC and Rule Ratification

Currently, the PSC has exemptions to SERC and rule ratification requirements, as provided under s. 120.541, F.S., for the following rulemaking delegations:

- Pole attachment provisions under s. 366.04(8), F.S.;
- Safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers under s. 366.04(9), F.S.; and
- Redundancy and transfer of ownership provisions regarding poles under s. 366.97, F.S.

The 2023 General Appropriations Act implementing bill, SB 2502,⁵⁴ also provided, for the 2023-2024 fiscal year only, the PSC with exemptions to SERC and rule ratification requirements, as provided under s. 120.541, F.S., for the following rulemaking delegations:

- The establishment and operational requirements of the Florida Public Service Regulatory Trust Fund under 350.113, F.S.;
- Telecommunications company RAFs under s. 364.336, F.S.;

⁴⁹ Section 120.541(1)(a), F.S.

⁵⁰ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

⁵¹ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

⁵² Section 120.541(2)(a), F.S.

⁵³ Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

⁵⁴ Chapter 2023-240, s. 51, Laws of Fla.

- Investor-owned electric utility, investor-owned gas utility, municipal gas utility and gas district, and municipal electric utility and rural electric cooperative RAFs under 366.14, F.S.
- Water and wastewater utility RAFs under 367.145, F.S.; and
- Natural gas transmission company RAFs under 368.109, F.S.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 120.80, F.S., to only make ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., exempt from the rule ratification requirements under s. 120.541(3), F.S., and not the entirety of s. 120.541, F.S. (the bill also removes the 2023-2024 fiscal year provision currently in statute). Thus, for those sections regarding RAFs, the PSC must still follow the SERC preparation requirements provided in ss. 120.541(1), (2), and (5), F.S.

Section 2 of the bill provides that it shall become effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While the bill does not substantially financially impact the private sector, it does revise the process requirements for the PSC to amend RAFs by rule. Specifically, it eliminates the requirement that such rule amendments be ratified by the Legislature. If the PSC were

to amend the RAF rates paid by utilities, such amended costs would likely impact utility rates.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 120.80 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Collins

14-00505-24

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A bill to be entitled

An act relating to regulatory assessment fees;
amending s. 120.80, F.S.; exempting certain rules
adopted by the Florida Public Service Commission
relating to regulatory assessment fees from the
requirement of legislative ratification; providing an
effective date.

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

Section 1. Paragraph (g) of subsection (13) of section
120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.-

(13) FLORIDA PUBLIC SERVICE COMMISSION.-

(g)1. Rules adopted by the Florida Public Service
Commission to implement ss. 366.04(8) and (9) and 366.97 are not
subject to s. 120.541.

2. ~~For the 2023-2024 fiscal year,~~ Rules adopted by the
Florida Public Service Commission to implement ss. 350.113,
364.336, 366.14, 367.145, and 368.109 are not subject to s.
120.541(3) ~~s. 120.541. This subparagraph expires July 1, 2024.~~

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



The Florida Senate

Committee Agenda Request


To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: November 28, 2023

I respectfully request that **Senate Bill # 364**, relating to Regulatory Assessment Fees, be placed on the:

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



Senator Jay Collins
Florida Senate, District 14

Date: _____

Agency Affected:	Public Service Commission	
Program Manager:	Lance Watson	Telephone: 413.6125
Agency Contact:	Katherine Pennington	Telephone: 413.6596
Respondent:	Katherine Pennington	Telephone: 413.6596

RE: SB 364

I. SUMMARY:

SB 364 amends Section 120.80, Florida Statutes (F.S.), to create a permanent exemption from the legislative ratification requirement of Section 120.541(3), F.S., for rules adopted by the Florida Public Service Commission (PSC) that implement Sections 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., which pertain to the regulatory assessment fees (RAFs) utilities and companies pay to the PSC to cover the cost of regulation.

II. PRESENT SITUATION:

PSC RAFs

The PSC is an arm of the Legislature. § 350.001, Fla. Stat. The agency has jurisdiction over the rates and service of electric, natural gas, water, and wastewater investor-owned utilities; limited jurisdiction over municipal electric and natural gas utilities, rural electric cooperative utilities, and natural gas districts; and very limited regulatory oversight over telecommunications companies. The PSC is a trust-funded agency, solely funded by RAFs which, by law, the PSC is required to establish by rule and to collect from each utility and company it regulates. *See* §§ 350.113, 364.336, 366.14, 367.145, 368.109, Fla. Stat. RAFs are credited to the trust fund and withdrawn according to the PSC's budget that is set annually by the Legislature. *See* § 350.113, Fla. Stat. The PSC does not receive any funding from the State of Florida's General Revenue Fund.

The statutory framework sets forth certain requirements for the RAF rules. First, RAFs cannot exceed a maximum rate (cap) established for each industry. *See* §§ 364.336, 366.14, 367.145, 368.109, Fla. Stat. Second, RAFs for each industry must be sufficient to cover the cost of regulating the utilities or companies in that industry, to the extent practicable. *See* § 350.113(3), Fla. Stat. Third, RAFs collected from one industry cannot be used to subsidize the regulatory cost of another industry. *See* § 367.145(3), Fla. Stat.

Legislative Ratification of Proposed Agency Rules, Including PSC RAF Rules

The Legislature requires the PSC to establish a RAF rate for each regulated industry. Thus, to change the RAF rate for an industry, the PSC must go through the rulemaking process set out in Section 120.54, F.S. In 2010, the Legislature enacted Section 120.541(3), F.S., which requires the Legislature to ratify any proposed agency rule if the statement of estimated regulatory costs

(SERC) concludes that the proposed rule is likely to increase regulatory costs in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Because of the sheer size of the industries regulated by the PSC, even the slightest marginal increase in RAF rates set forth in each PSC RAF rule would trigger the legislative ratification requirement of Section 120.541(3), F.S.

Exemptions From Legislative Ratification Requirement Granted for Other Agency Rules Since 2010

Since 2010, the Legislature has seen fit to pass into law a number of exemptions from ratification for certain agency rules where ratification would be redundant and unnecessary because of the presence of one or more compelling legislative policy factors, such as (1) there exists comprehensive statutory control over the rule's subject matter, including detailed guidance for agency rulemaking; (2) the presence of direct oversight or engagement by the Legislature or the public through another process; (3) public policy would be frustrated by unnecessary delays in the rulemaking process; or (4) the Legislature clearly intends, understands, or makes explicit the regulatory cost in the enabling legislation.¹

For example, the Legislature has exempted certain other agencies from the legislative ratification requirement for regular and repeating amendments to rules and codes that are expressly authorized or required by statute. *See* §§ 120.541(4) and 120.80(13)(g), (16)(d), (17), and (18), Fla. Stat. Additionally, the Legislature recently granted the PSC a limited exemption from the SERC and legislative ratification requirements for rules regulating the safety and maintenance of utility poles and the rates and terms of pole attachments. §§ 120.80(13)(g), 366.04(8) and (9), Fla. Stat.

The PSC's 2023 Temporary Exemption of RAF Rules From SERC and Legislative Ratification Requirements

In the 2023 Session, the Legislature granted the PSC an exemption from the SERC and legislative ratification requirements of Section 120.541, F.S., for the 2023-2024 fiscal year. Thus, the PSC is not required to prepare a SERC or obtain legislative ratification when it ultimately proposes any RAF rule amendment if it is adopted prior to July 1, 2024. The PSC initiated rulemaking on September 12, 2023, to amend Rule 25-6.0131, Florida Administrative Code (F.A.C.), pertaining to regulatory assessment fees for investor-owned electric companies, municipal electric utilities, and rural electric cooperatives.

III. EFFECT OF PROPOSED CHANGES:

SB 364 amends Section 120.80(13), F.S., to make permanent the existing temporary exemption from the legislative ratification requirement of Section 120.541(3), F.S., for the PSC's RAF rules. The effect of the bill would be that the PSC would not have to submit proposed RAF rules to the Legislature for ratification as part of the rulemaking process. Under this bill, the PSC will continue to prepare SERCs. The same legislative policy factors discussed above that have

¹ *See* Eric H. Miller & Donald J. Rubottom, *Legislative Rule Ratification: Lessons from the First Four Years*, 89-FEB FLA. B.J., 36 (2015).

generally been found to support a permanent exemption from the ratification requirement for other specific agency rules apply to the PSC’s RAF rules. Therefore, this bill’s permanent exemption of the PSC’s RAF rules from the legislative ratification requirement is consistent with other agency exemptions allowed by the Legislature, including the temporary exemption already granted by the Legislature in 2023 for the same rules. Passage of the bill will enable the PSC to prudently manage its trust fund resources to fulfill its statutory obligations, while continuing to be appropriately subject to annual legislative budget oversight.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

(in this section please provide information concerning FTEs. How many positions, if any will be necessary to enact this bill. Also, what specific positions will be needed.)

	(FY 24-25)	(FY 25-26)	(FY 26-27)
	<u>Amount / FTE</u>	<u>Amount / FTE</u>	<u>Amount / FTE</u>
A. Revenues			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
B. Expenditures			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

None.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

None.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

No.

D. Other:

None.

VIII. COMMENTS:

None.

Prepared by: [staff name(s)]

Date:

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

12/06/2023

Meeting Date

364

Bill Number or Topic

Regulated Industries

Committee

Amendment Barcode (if applicable)

Name

Lance Watson

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Address

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Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Public Service Commission

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 92

INTRODUCER: Senator Hooper

SUBJECT: Yacht and Ship Brokers' Act

DATE: December 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			AEG	
3.			FP	

I. Summary:

SB 92 revises the regulation of yacht and ship brokers and salespersons by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR).

The definition for the term “yacht” is revised by the bill to require that the vessel be manufactured or operated for pleasure or leased, rented, or chartered to a person other than the owner for such person’s pleasure. The bill retains current law that a yacht is a vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, but deletes the requirement for the vessel to weigh less than 300 gross tons.

The bill exempts from the license requirements for a broker or salesperson a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The bill revises the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht. Alternatively, a person may qualify for a broker license by certifying that he or she has obtained 20 hours of education, in-person or online, from a provider approved by the division regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee. The bill deletes the requirement that an applicant for a broker license must have been licensed as a salesperson for two consecutive years.

The bill takes effect October 1, 2024.

II. Present Situation:

Division of Florida Condominiums, Timeshares and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the DBPR has jurisdiction over yacht and ship brokers and sales persons under ch. 326, F.S., timeshares under ch. 721, F.S., and mobile homes under ch. 723, F.S., condominiums under chs. 718, F.S., cooperatives under ch. 719, F.S., and limited jurisdiction over homeowners' associations under ch. 720, F.S.

Yacht and Ship Broker Branch Office Licenses

Chapter 326, F.S., which may be cited as the “Yacht and Ship Brokers' Act,”¹ governs the licensing and regulation of yacht and shipbrokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker Section, a unit of the division, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.²

Definitions

A broker or yacht and ship broker is a “person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons.”³

A salesperson is “a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.”⁴

The term “yacht” means “any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.”

Licensing

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.

To qualify for a broker’s license, a person must have been licensed as a salesperson for at least two consecutive years.⁵ Current law gives the division the discretion to deny an application for a broker or salesperson license if the applicant does not:

- Furnish proof satisfactory to the division that he or she is of good moral character.⁶
- Certify that he or she has never been convicted of a felony.
- Post the bond required by the Yacht and Ship Brokers' Act.

¹ Section 326.001, F.S.

² See ch. 326, F.S., and Department of Business and Professional Regulation, *Yacht and Ship*, available at: <http://www.myfloridalicense.com/DBPR/yacht-and-ships/> (last visited Nov. 30, 2023).

³ Section 326.002(1), F.S.

⁴ Section 326.002(3), F.S.

⁵ Section 326.004(8), F.S.

⁶ See Fla. Admin. Code R. 61B-60.003(3)(a), providing the factors that bear upon good moral character.

- Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.
- Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.
- Have a current license and has operated as a broker or salesperson without a license.⁷

The applicant must also deliver to the division a good and sufficient surety bond or irrevocable letter of credit, executed by the broker as principal, in the sum of \$25,000 before any license may be issued to a broker.⁸ A salesperson must have a bond or equivalent securities in the sum of \$10,000.⁹

The fee for an initial license application for a salesperson or broker license, and for the biennial renewal of a license, is \$500. Additionally, there is a \$51 fee for national fingerprint processing during the initial application process.¹⁰

A broker is not required to complete any continuing education hours as a condition for licensure or renewal of a license.

A license is not required for:

- A person who sells his or her own yacht.
- An attorney at law for services rendered in his or her professional capacity.
- A receiver, trustee, or other person acting under a court order.
- A transaction involving the sale of a new yacht.
- A transaction involving the foreclosure of a security interest in a yacht.¹¹

A broker must maintain a principal place of business in Florida and may establish branch offices in Florida.¹² The biennial fee for a branch office is \$100 for each branch office.¹³

The division is required to provide by rule for the issuance of a temporary 90-day license to an applicant while the Florida Department of Law Enforcement (FDLE) conducts a national criminal history analysis of the applicant by means of fingerprint identification.¹⁴

There are currently 2,810 licensed salespersons and 337 licensed brokers.¹⁵

⁷ Section 326.004(6), F.S.

⁸ Section 326.004(7), F.S.

⁹ Section 326.004(9), F.S.

¹⁰ Fla. Admin. Code R. 61B-60.003(4).

¹¹ Section 326.004 (3), F.S.

¹² Section 326.004 (13), F.S.

¹³ Fla. Admin. Code R. 61B-60.003(4).

¹⁴ Section 326.004 (15), F.S. *See* Fla. Admin. Code R. 61B-60.001(1)(k) and 61B-60.003(2)(a), relating to the requirements for a temporary license.

¹⁵ Email from Derek Miller, Director of Legislative Affairs, Department of Business and Professional Regulation, to Patrick L. Imhof, Staff Director, Senate Regulated Industries Committee (Nov. 30, 2023) (on file with the Senate Regulated Industries Committee).

III. Effect of Proposed Changes:

The bill amends s. 326.002(4), F.S., to revise the term “yacht” to provide that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person’s pleasure. The bill deletes the requirement for the vessel to weigh less than 300 gross tons.

The bill amends s. 326.004(3), F.S., to exempt from the license requirements for a broker or salesperson a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The bill amends s. 326.004(6), F.S., to clarify that the division may deny a broker or salesperson license to a person who does not meet all of the requirements listed in this subsection.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht. The bill does not provide a time period during which the four must have been performed. Alternatively, a person may qualify for a broker license by certifying that he or she has completed 20 hours of continuing education,¹⁶ in-person or online, from a provider approved by the division under ss. 455.2178 and 455.2179, F.S.,¹⁷ regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee.

The bill also amends s. 326.004(8), F.S., to delete the requirement that an applicant for a broker license must have been licensed as a salesperson for two consecutive years.

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ Salespersons and brokers licensed under ch. 326, F.S., are not required to complete continuing education as a condition for renewal of a license.

¹⁷ Sections ss. 455.2178 and 455.2179, F.S., relate to the division’s authority and the process for approving of continuing education providers.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An out-of-state sales broker or salesperson may engage in a transaction for the sale or purchase of a yacht under the conditions in the bill without applying for a license, including paying the \$500 license application fee.

Applicants for a broker license who opt to qualify for a license by completing 20 hours of education will incur costs related to completing those education hours.

C. Government Sector Impact:

Under the bill, a broker or salesperson in another state who is not licensed in Florida would be able to engage in the purchase or sale of a yacht in Florida if the transaction is entirely executed through a licensed Florida broker or salesperson. The division may incur costs reviewing the sales transaction history of an applicant for a broker's license and developing the criteria for an education provider which license applicants may use as option for qualifying as a broker. Under the bill, the division anticipates it will need an additional four full time employees for a total fiscal impact of \$342,742 recurring and \$27,845 nonrecurring.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition for the term "yacht" is revised by the bill to require that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person's pleasure. The term "pleasure" is undefined. However, the term "pleasure" means, in part, "someone or something that provides amusement or enjoyment," and the term

¹⁸ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 22*, pp. 2 and 5 (Nov. 2, 2023) (on file with the Senate Regulated Industries Committee).

“recreation” is a synonym for this meaning of the term.¹⁹ The bill may be interpreted as defining “yacht” as a vessel used primarily for recreation.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht. The bill does not provide a time period during which the four must have been performed.

Under the bill, a broker or salesperson in another state who is not licensed in Florida would be able to engage in the purchase or sale of a yacht in Florida if the transaction is entirely executed through a licensed Florida broker or salesperson. The division notes that, if the non-Florida licensed broker violates ch. 326, F.S., the division would only have regulatory jurisdiction over the Florida-licensed broker or salesperson.²⁰

The bill permits a person to qualify for a broker license if he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or certifies that they have obtained 20 continuing education credits approved by the division. The division states that it is unclear whether the continuing education requirements are recurring for each licensure period or only apply to initial licensure.²¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 326.002 and 326.004.

IX. Additional Information:

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

None.

B. **Amendments:**

None.

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

¹⁹ See Merriam-Webster.com, “Pleasure,” <https://www.merriam-webster.com/thesaurus/pleasure> (last visited Nov. 20, 2023).

²⁰ See *infra*, note 18 at 2.

²¹ *Id.*

By Senator Hooper

21-00176-24

202492__

A bill to be entitled

An act relating to the Yacht and Ship Brokers' Act; amending s. 326.002, F.S.; revising the definition of the term "yacht"; amending s. 326.004, F.S.; exempting a person who conducts business as a broker or salesperson in another state from licensure in this state for specified transactions; requiring, rather than authorizing, the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to deny licenses for applicants who fail to meet certain requirements; revising requirements for licensure as a broker; providing an effective date.

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

Section 1. Subsection (4) of section 326.002, Florida Statutes, is amended to read:

326.002 Definitions.—As used in ss. 326.001-326.006, the term:

(4) "Yacht" means any vessel that ~~which~~ is propelled by sail or machinery in the water, ~~which~~ exceeds 32 feet in length, and is:

(a) Manufactured or operated primarily for pleasure; or

(b) Leased, rented, or chartered to someone other than the owner for the other person's pleasure ~~which weighs less than 300 gross tons.~~

Section 2. Subsections (6) and (8) of section 326.004, Florida Statutes, are amended, and paragraph (f) is added to

Page 1 of 3

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

21-00176-24

202492__

subsection (3) of that section, to read:

326.004 Licensing.—

(3) A license is not required for:

(f) A person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase of a yacht under this act, if the transaction is executed in its entirety with a broker or salesperson licensed in this state.

(6) The division ~~must~~ may deny a license to any applicant who does not meet all of the following requirements:

(a) Furnish proof satisfactory to the division that he or she is of good moral character.

(b) Certify that he or she has never been convicted of a felony.

(c) Post the bond required by the Yacht and Ship Brokers' Act.

(d) Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.

(e) Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.

(f) Have a current license and has operated as a broker or salesperson without a license.

(8) A person may not be licensed as a broker unless he or she has been licensed as a salesperson and can demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or can certify that he or she has obtained at least 20 continuing education credits approved by the division for at least 2 consecutive years, ~~and may not be licensed as a broker unless he or she has~~

Page 2 of 3

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

21-00176-24

202492

59 ~~been licensed as a salesperson for at least 2 consecutive years.~~

60 Section 3. This act shall take effect October 1, 2024.



The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: November 7, 2023

I respectfully request that **Senate Bill # 92**, relating to Yacht and Ship Brokers' Act, be placed on the:

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

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

Senator Ed Hooper
Florida Senate, District 21



ANALYSIS

2024 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	SB 92
BILL TITLE:	Yacht and Ship Brokers' Act
BILL SPONSOR:	Sen. Hooper
EFFECTIVE DATE:	10/01/2024

COMMITTEES OF REFERENCE

1) Fiscal Policy
2) Appropriations Committee on Ag., Env., & Gen. Govt.
3) Fiscal Policy
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Regulated Industries

SIMILAR BILLS

BILL NUMBER:	HB 95
SPONSOR:	Rep. LaMarca

PREVIOUS LEGISLATION

BILL NUMBER:	SB 406
SPONSOR:	Sen. Hooper
YEAR:	2023
LAST ACTION:	Died in Fiscal Policy

IDENTICAL BILLS

BILL NUMBER:	NA
SPONSOR:	NA

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	11/02/2023
LEAD AGENCY ANALYST:	Chevonne Christian, CTMH Director
ADDITIONAL ANALYST(S):	Tracy Dixon, Service Operations Robin Jordan, Division of Technology
LEGAL ANALYST:	Daniel Brackett – Deputy General Counsel
FISCAL ANALYST:	Garrett Blanton, Office of Planning and Budget

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POLICY ANALYSIS

1. EXECUTIVE SUMMARY

SB 92 amends Chapters 326, Florida Statutes by revising the definition of “yacht,” adding that a license is not required for specific instances, requiring the division to deny a license to an applicant who doesn’t meet the requirements, and requiring continuing education credits for licensed brokers. The bill takes effect October 1, 2024.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Chapter 326, F.S., also known as the Yacht and Ship Brokers Act, defines a yacht as a vessel propelled in the water by sail or machinery that exceeds 32 feet in length and weighs less than 300 gross tons.

Chapter 326, F.S., identifies instances when a license is not required and does not include circumstances when dealing with an out-of-state salesperson or broker.

Chapter 326, F.S., allows the division to deny a license to an applicant whose application is deficient. The act currently sets forth no educational requirements and no approved courses for continuing educational credits.

2. EFFECT OF THE BILL:

The definition of a yacht is amended to add that, in order to be classified as a yacht, the vessel must be manufactured or operated primarily for pleasure or leased, rented, or chartered to someone other than the owner for the other person’s pleasure. The maximum tonnage requirement for a yacht has been removed. The term “pleasure” is undefined; thus, the division would need rulemaking authority to define such a term. Moreover, “primarily” would need to be determined by either statute or rule relative to the scope of use. Otherwise, there is no standard to discern whether the yacht in question is a yacht for which the division has regulatory authority.

Additionally, the bill adds that a license is not required for a person who conducts business as a broker or salesperson in another state as their primary profession and engages in the purchase of a yacht under the act if the transaction is executed in its entirety with a broker or salesperson licensed in this state. Based on the bill language, an unlicensed broker or salesperson in another state would be able to engage in the purchase or sale of a yacht in Florida only if the transaction is entirely executed through a licensed Florida broker or salesperson. Accordingly, regardless of the extent to which the non-Florida licensed broker is responsible for violating Ch. 326, F.S., the Florida licensed broker or salesperson would be the only licensee for which the division would have the regulatory jurisdiction to penalize administratively. The Division would need an additional Investigation Specialist II position to thoroughly review this transaction to ensure compliance with Chapter 326, F.S.

Also, the bill mandates the Division to deny an application for licensure when an applicant fails to provide all of the sufficient documentation presently listed under s. 326.004, F.S.

Finally, the bill specifies that a person may not be licensed as a broker unless the person is a licensed salesperson and demonstrates direct involvement in at least four transactions that resulted in the sale of a yacht or certifies that they have obtained 20 continuing education credits approved by the division. It is unclear whether these requirements are recurring for each licensure period or merely once and only to become initially licensed.

The education credit requirement could be interpreted in a variety of manners. One interpretation is that the Division needs to create curricula or at least curricula topics. These “division-approved” curricula must be taken to become licensed (similar to that of the condominium board member certification course pursuant to chapter 718, F.S.). If this is the interpretation, the Division would need rulemaking authority to delineate the topics or criteria. The Division would also need more than its existing two yacht and ship program area staff members to carry out such a function. Another interpretation is that the Division would be required to review certificates submitted by the licensee or the curricula provider, establishing that the licensee has taken the 20 hours. In order to appropriately carry out the legislative intent, this provision should provide greater clarity.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	unknown
Opponents and summary of position:	unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y N

If yes, provide a description:	NA
Date Due:	NA
Bill Section Number(s):	NA

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Y N

Board:	NA
Board Purpose:	NA
Who Appoints:	NA
Changes:	NA
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y N

Revenues:	NA
Expenditures:	NA
Does the legislation increase local taxes or fees? If yes, explain.	NA

If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	NA
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2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y N

Revenues:	N/A
Expenditures:	<p>It is anticipated that the additional license requirements within the bill will require additional staff within the Division of Condominiums, Timeshares, and Mobile Homes.</p> <p>The Division would need an additional 4 FTE with 187,660 of rate, \$286,776 of Salaries and Benefits budget authority, \$54,526 (\$27,845 nonrecurring) of Expense budget authority, and \$1,440 of Transfer to DMS – HR services budget authority.</p> <p>TOTAL FISCAL IMPACT of \$342,742 (\$27,845 nonrecurring).</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y N

Revenues:	NA
Expenditures:	NA
Other:	NA

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y N

If yes, explain impact.	NA
Bill Section Number:	NA

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p style="text-align: center;"><u>Infrastructure and Licensing Costs</u></p> <p>Additional staffing required to implement the provisions of this bill would result in technology infrastructure and licensing costs. Assuming employees are located in office space outside of existing offices, additional undetermined infrastructure costs will be incurred based on number, location and suitability.</p> <p>For four additional CTMH staff (1 Regulatory Program Administrator, 1 Inspection Specialist II, and 2 RS IIs):</p> <ul style="list-style-type: none"> Non-recurring costs for network drop - \$800.00 Non-recurring costs of software licenses – \$6,776.60 Recurring software license maintenance - \$1,205.04
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	NA
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ADDITIONAL COMMENTS

The term Gross Tons has been removed from the statute by this bill so Rule 61B-60.001 Definitions and Scope will need to be amended because it defines this term in (1)(d).

Under this bill, it is unclear as to whether there is an outline of the credit value or details regarding the required coursework. Is it merely a certificate? Is it the specific course curriculum that was taken that must be provided to the Division? Nevertheless, the Division would need rulemaking authority or greater clarification and specificity regarding this proposed provision under any of these interpretations. Additionally, the Division would need a Regulatory Program Administrator and two Regulatory Specialist III positions dedicated to reviewing the education credit requirement.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No additional comments.
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The Florida Senate

APPEARANCE RECORD

92

12/6/23

Meeting Date

Bill Number or Topic

Reg TMS

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Ellyn Bogdanoff

Phone

954 364 6005

Address

1 E Bed Blvd

Email

ebogdanoff@beckerlawyers.com

Street

FLAVID

33301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

International Yacht Brokers Assn.

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SPB 7006

INTRODUCER: For consideration by the Regulated Industries Committee

SUBJECT: OGSR/Utility Owned or Operated by a Unit of Local Government

DATE: December 6, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Schrader</u>	<u>Imhof</u>	_____	RI Submitted as Comm. Bill/FAV

I. Summary:

SPB 7006 saves from repeal the current public records exemptions for the following information held by a utility owned or operated by a unit of local government (municipal utility):

- Information related to the security of the technology, processes, or practices that are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- Customer meter-derived data and billing information in increments less than one billing cycle.

The bill also saves from repeal the current public meetings exemption for any portion of a meeting that would reveal the above information.

The exemptions are required to protect the security of business and residential municipal utility customers, and to protect sensitive information regarding security measures in place to protect technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems.

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, 2024. The bill removes the scheduled repeals to continue the exempt status.

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

The bill takes effect October 1, 2024.

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.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 In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.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

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.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰ A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S., and FLA. CONST. art. I, s. 24(b). Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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 *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

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² 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.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ 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.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

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”¹⁷ or the “Sunshine Law,”¹⁸ 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.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ 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.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

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.

¹² 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).

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ 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.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

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.²⁵ 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.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

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 exemptions.²⁸ 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.²⁹ 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.³⁰ 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;³¹
- 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;³² or
- It protects trade or business secrets.³³

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ *Id.*

²⁷ *See supra* note 11.

²⁸ 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.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ 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?

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.³⁵ 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.³⁶

Security and Privacy Concerns with Customer Consumption Data and Smart Meters

Smart meters are devices that measure and transmit data on electricity, water, and gas usage. These devices generally eliminate the need for traditional manual reading of utility consumer meters. Smart meters can provide much more granular data regarding customer consumption patterns and usage. While these devices do offer significant benefits in increasing utility reliability,³⁷ the information they produce can raise some privacy and security concerns. These may include:

- The data generated may provide insight into a particular customer’s daily routine, habits, and lifestyle which could be used for criminal activity or unwanted marketing.
- Unauthorized selling of consumption data to third parties.
- Risk of hacking and cyberattacks to either the meter itself or utilizing a compromised meter as a pathway to attack other devices connected to the smart meter.³⁸

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.³⁹ The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.⁴⁰ In order to do so, the PSC exercises authority over public utilities⁴¹ in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.⁴² PSC authority over municipal utilities is more limited, however.

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ United States Department of Energy, *Electric Meters*, <https://www.energy.gov/energysaver/electric-meters> (last visited Dec. 1, 2023).

³⁸ Shradda Tupe, *Mitigating Smart Meter Security Risk: A Privacy-Preserving Approach*, EE POWER, Mar 23, 2023, <https://eepower.com/technical-articles/mitigating-smart-meter-security-risk-a-privacy-preserving-approach/#> (last visited Dec. 4, 2023).

³⁹ Section 350.001, F.S.

⁴⁰ See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Nov. 30, 2023).

⁴¹ Under s. 366.02, F.S., a “public utility” is defined “as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state.” There are, however, several exceptions to this definition, which include, “a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district.” Generally, “public utility” means investor-owned utilities.

⁴² Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Nov. 30, 2023).

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid⁴³ and may order the addition or repair of infrastructure as necessary.⁴⁴ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.⁴⁵ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC has jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁴⁶ Municipally-owned or operated utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by the governing body elected by the cooperative's membership.

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2022, the PSC had jurisdiction over 149 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.⁴⁷

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation."⁴⁸ The PSC also does not regulate utilities in counties exempt from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

According to a 2017 research report from the University of North Carolina there were 1,647 community water systems in Florida. Of those, 973 are privately owned. Florida had 371 publicly-owned treatment works facilities. The privately-owned community water systems

⁴³ Section 366.04(5) and (6), F.S.

⁴⁴ Section 366.05(1) and (8), F.S.

⁴⁵ Section 366.05, F.S.

⁴⁶ Florida Public Service Commission, *About the PSC*, *supra* note 42.

⁴⁷ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, 28 <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf> (last visited Dec. 1, 2023).

⁴⁸ Section 367.022(2), F.S.

served almost 1.4 million people, the government-owned community water systems served more than 18.4 million people, and the publicly-owned treatment works facilities served just over 13 million people.⁴⁹

Municipal Water and Sewer Utilities in Florida

A municipality⁵⁰ may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.⁵¹

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality's corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a unit of local government. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a “municipal utility,” variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.⁵² Florida also has 27 municipally-owned gas utilities and four special gas districts.⁵³

Municipal Utility Public Records and Public Meetings

Proprietary Confidential Business Information

Section 119.0713(4), F.S., makes proprietary confidential business information held by a municipal utility in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources, confidential and exempt from public disclosure. Proprietary confidential business information would include:

- Trade secrets, as defined in s. 688.002, F.S.,
- Internal auditing controls and reports of internal auditors,
- Security measures, systems, or procedures,

⁴⁹ University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs, A Guide for Water and Wastewater Utilities* (2017), available at <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Nagivating-Pathways-to-Rate-Funded-CAPs.pdf> (last visited Dec. 1, 2023).

⁵⁰ Defined by s. 180.01, F.S. “as any city, town, or village duly incorporated under the laws of the state.”

⁵¹ Section 180.02, F.S.

⁵² Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Nov. 30, 2023).

⁵³ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf>) (last visited Dec. 4, 2023). A “special gas district” is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.”

- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms, and
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Records Used Directly or Solely to Prepare and Submit Bids

Section 119.0713(3), F.S., provides that any data, record, or document used directly or solely by a municipally-owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt from public disclosure. This exemption is limited in scope to the period under which such bids are under consideration and terminates upon the execution of the contract for sale.

PSC Public Disclosure Protections

Section 350.121 protects from public disclosure records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics obtained by the PSC through an inquiry. In addition, ss. 366.093, 367.156, and 368.108, F.S., provide processes for public utilities, water and wastewater utilities, and gas transmission and distribution companies, respectively, to protect proprietary confidential business information from public disclosure, provided pursuant to discovery in a PSC docket or proceeding.

However, as municipally-owned or operated utility rates and revenues are primarily regulated by their respective local governments or local utility boards, these PSC protections would not apply those utility records, local meetings, or local regulatory proceedings (except such records maintained by the PSC or obtained through discovery in a PSC docket or proceeding).

Agency Security and Fire Safety Plans

Section 119.071(3)(a), F.S., makes state agency property security and fire safety plans confidential and exempt from public disclosure. The term “security or firesafety system plan” means:

- 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 or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

Relatedly, s. 286.0113(1), F.S., exempts from public meeting requirements, portions of meetings that would reveal such information specified in s. 119.071(3)(a), F.S.

Water Treatment Facilities

Section 119.071(3)(b), F.S., makes 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 exempt from public disclosure. However, such may be disclosed:

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

Specific Exceptions to Utility Public Records and Public Meetings for Municipal Utilities

In 2016, the Legislature created public record exemptions in s. 119.0713(5), F.S.,⁵⁴ which subsection was further amended in 2019,⁵⁵ for the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of the technology, processes, or practices that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- Customer meter-derived data and billing information in increments less than one billing cycle.

In 2019, the Legislature also created a public meeting exemption in s. 286.0113(3), 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 portions of meetings.⁵⁶

In expressing the need for the above public records and public meetings exemptions, the bills' public necessity statements cite to:

- The finding that as utility system infrastructure becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology grows.⁵⁷
- The risk of releasing customer meter derived data and billing information in increments of less than one billing cycle to third parties. Such data could be used to specifically identify minute-by-minute usage patterns, including the exact appliance or service being used. Such a

⁵⁴ Chapter 2016-95, s. 1-3, Laws of Fla.

⁵⁵ Chapter 2019-38, s. 1-2, Laws of Fla.

⁵⁶ Chapter 2019-37, s. 1-2, Laws of Fla.

⁵⁷ Chapter 2016-95, s. 3, Laws of Fla., Chapter 2019-38, s. 2, Laws of Fla., and Chapter 2019-37, s. 2, Laws of Fla.

release of information raises significant security issues for both businesses and homeowners.⁵⁸

- The risk of releasing sensitive information regarding security measures in place to protect technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems. Such protection helps to ensure that municipal utilities have greater safeguards to protect against security threats and will bolster efforts to develop more resilient information technology systems and industrial control technology systems.⁵⁹

The public record and public meeting exemptions stand repealed on October 2, 2024, 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 jointly developed a survey requesting that operators review and provide feedback on the public records exception in s. 119.0713(5), F.S., and the public meetings exception in s. 286.0113(3), F.S. These surveys were provided to the Florida Municipal Electric Association and the Florida League of Cities for distribution to their members.

Staff of the Senate Committee on Regulated Industries received a total of 33 responses to this survey. Of the 29 respondents providing feedback regarding the public records exception in s. 119.0713(5), F.S., all responded that the subsection be reenacted “as is.” Similarly, of the 23 respondents providing feedback regarding public meetings exception in s. 286.0113(3), F.S., all responded that the subsection be reenacted “as is.”

Legislative staff requested that respondents consider the public records exemption for cybersecurity in s. 119.0725, F.S., and determine if there was any overlap between those provisions and the exemption under review. Some respondents noted that s. 119.0725, F.S., did have some overlap with s. 119.0713(5), F.S.; however, those that gave such feedback noted that s. 119.0725, F.S., did not include the full breadth of the information protected by s. 119.0713, F.S. Further, many respondents noted that, unless several provisions of s. 119.0713(5), F.S., were imported verbatim into s. 119.0725, F.S., there would be a loss in information currently protected if s. 119.0713(5), F.S., were not to be reenacted.

Respondents also noted some additional areas of potential overlap of protection with s. 119.0713(5), F.S., which include:

- Sections 815.045 and 119.0715, F.S., which prohibit public agencies from releasing trade secret information and create a public records exemption for such trade secret information.
- Federal rule 18 C.F.R. s. 388.113(c)(2), which protects Critical Energy Infrastructure Information (CEII) submitted to or generated by the Federal Energy Regulatory Commission.

⁵⁸ Chapter 2019-38, s. 2, Laws of Fla.

⁵⁹ Chapter 2016-95, s. 3, Laws of Fla.

- Sections 366.093 and 367.156, F.S., which provide processes to protect confidential proprietary business information provided to the PSC from public disclosure.
- Section 119.0713(3), F.S., which provides a public records exemption for any data, record, or document used directly or solely by a municipally-owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer.
- Section 119.0713(4), F.S., which provides a public records exemption for proprietary confidential business information, held by a municipal electric utility that is subject to this chapter in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources.

However, the respondents appear to believe these compliment the exemptions under review.

III. Effect of Proposed Changes:

Section 1 amends s. 119.0713(5), F.S., to remove the scheduled repeal date of the public record exemption for the following information held by a utility owned or operated by a unit of local government (municipal utility):

- Information related to the security of the technology, processes, or practices that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- Customer meter-derived data and billing information in increments less than one billing cycle.

Thus, the public record exception established in s. 119.0713(5), F.S., would remain in place.

Section 2 amends s. 286.0113(3), F.S., to remove the scheduled repeal date of the exemption from public meeting requirements for any portion of a meeting that would reveal the protected information specified in Section 1. Recordings or transcripts of the exempt portions of meetings would also remain protected pursuant to that subsection.

Section 3 provides that the bill is effective October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

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

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.0713 and 286.0113.

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.

FOR CONSIDERATION By the Committee on Regulated Industries

580-00911-24

20247006pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., which provides an exemption from public records requirements for certain information held by a utility owned or operated by a unit of local government; removing the scheduled repeal of the exemption; amending s. 286.0113, F.S., which provides an exemption from public meetings requirements for certain portions of meetings held by a utility owned or operated by a unit of local government; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (5) of section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(5) (a) The following information held by a utility owned or operated by a unit of local government is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.

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

580-00911-24

20247006pb

2. Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

3. Customer meter-derived data and billing information in increments less than one billing cycle.

(b) This exemption applies to such information held by a utility owned or operated by a unit of local government before, on, or after the effective date of this exemption.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (3) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(3) ~~(a)~~ That portion of a meeting held by a utility owned or operated by a unit of local government which would reveal information that is exempt under s. 119.0713(5) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting are exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and

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

580-00911-24

20247006pb

59 information made exempt by this section. In the event of such a
60 judicial determination, only the portion of the recording or
61 transcript which reveals nonexempt data and information may be
62 disclosed to a third party.

63 ~~(b) This subsection is subject to the Open Government~~
64 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
65 ~~repealed on October 2, 2024, unless reviewed and saved from~~
66 ~~repeal through reenactment by the Legislature.~~

67 Section 3. This act shall take effect October 1, 2024.

APPEARANCE RECORD

SB 7006

12/6

Meeting Date

Bill Number or Topic

S Reg. Industries

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Jared Grigas

Phone (850) 322-0229

Address 100 S Monroe St

Email jgrigas@fl-counties.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL. Assoc. of Counties

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

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

S-001 (08/10/2021)

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 Regulated Industries

BILL: SPB 7008

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Department of the Lottery

DATE: December 6, 2023 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Kraemer</u>	<u>Imhof</u>	_____	RI Submitted as Comm. Bill/FAV

I. Summary:

SPB 7008 saves from repeal the public records exemption in s. 24.1051, F.S., for certain information held by the Florida Department of the Lottery (department). Specifically, the bill continues the exemption from public disclosure held by the department related to the operations and processes of the department. The exemptions are necessary to protect the security and integrity of lottery operations, and to allow the department to participate in multistate lottery games. Information held by the department is designated as confidential and exempt, but may be disclosed to other governmental entities in the performance of their duties.

The exemptions are subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2024, unless reviewed and reenacted by the Legislature. The bill removes the scheduled repeal of the exemption to continue the exempt status of the information.

The bill takes effect October 1, 2024.

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.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 In addition to the Florida Constitution, the Florida Statutes provide that the public may access

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

legislative and executive branch records.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

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.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰ A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by statutory exemptions.

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S., and FLA. CONST. art. I, s. 24(b). Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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 *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.

¹² 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).

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹³

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 exemptions.¹⁴ 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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ 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.²¹ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ 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.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ 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?

²¹ FLA. CONST. art. I, s. 24(c).

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.²²

Department of the Lottery

In general, lotteries are illegal in Florida.²³ However, s. 15 of Article X of the State Constitution allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”²⁴ for the benefit of public education.²⁵

Prior to 2019, s. 24.105(12), F.S., authorized the department to determine by rule the information relating to the operation of the lottery to be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if necessary to the security and integrity of the lottery. Such information included trade secrets; security measures and reports; bid and contractual information that, if disclosed, would impair the department to contract for goods or services on favorable terms, and personnel information unrelated to compensation, duties, qualifications, or responsibilities. Confidential information was authorized to be released to other governmental entities as needed in connection with the performance of their duties, but the recipient was required to retain the confidentiality of the information provided.

Section 24.1051, F.S., enacted in 2019,²⁶ codified, clarified, and exempted the following information held by the department from inspection or copying of public records:

- Information that, if released, could harm the security or integrity of the department, including information:
 - Relating to the security of the department’s technologies, processes, and practices to protect networks, computers, data processing, software, data, and data systems from attack, damage, or unauthorized access;
 - Relating to security information and measures of the department, whether physical or virtual;
 - About lottery games, promotions, tickets, and ticket stocks, such as description, design, production, printing, packaging, shipping, delivery, storage, and validation processes; and
 - Concerning terminals, machines, and devices that issue tickets;
- Information required to be maintained as confidential in order for the department to participate in multistate lottery associations or games;

²² Section 119.15(7), F.S.

²³ See FLA. CONST. art. X, s. 7, and s. 849.09, F.S.

²⁴ See s. 24.104, F.S.

²⁵ See s. 24.121(2), F.S.

²⁶ See ch. 2019-41, Laws of Fla.

- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors; and
- Financial information about a vendor or lottery ticket retailer which is not publicly available and is provided for review of the entity's financial responsibility,²⁷ provided that the entity marks such information as confidential. However, financial information related to any contract, agreement, or addendum with the department, including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, is public record.

Penalties for the improper disclosure of lottery information that is designated as confidential and exempt are addressed in s. 24.1051(5), F.S. A person who, with intent to defraud or to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses such confidential and exempt information, commits a felony of the first degree.²⁸

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 met jointly with staff from the Department of the Lottery in August 2023 to discuss the public records exemption under review. The department staff noted the continued necessity for the exemption and recommended that the exemption be reenacted without any changes.

Legislative staff requested the department staff review the public records exemption for cybersecurity in s. 119.0725, F.S., and determine if there was any overlap between those provisions and the exemption under review. The department staff indicated that the exemption in s. 119.0725, F.S., covers different categories of information and that the exemption in s. 24.1051, F.S., be saved from repeal.²⁹

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 24.1051, F.S., for certain information held by the Florida Department of the Lottery (department). Specifically, the bill continues the exemption from public disclosure held by the department related to the operations and processes of the department. The exemptions are necessary to protect the security and integrity of lottery operations, and to allow the department to participate in multistate lottery games. Information held by the department is designated as confidential and exempt, but may be disclosed under certain circumstances.

The exemptions are subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2024, unless reviewed and reenacted by the Legislature. The bill removes the scheduled repeal of the exemption to continue the exempt status of the information.

²⁷ See s. 24.111, F.S., relating to vendors that contract with the department, and s. 24.112, F.S., relating to lottery ticket retailers.

²⁸ Section 775.082, F.S., provides a felony of the first degree is punishable by a term of imprisonment not to exceed thirty years. Section 775.083, F.S., provides a felony of the first degree is punishable by a fine not to exceed \$10,000.

²⁹ Memorandum from Reginald D. Dixon, Chief of Staff, Florida Lottery to Patrick L. "Booter" Imhof, Staff Director, Senate Committee on Regulated Industries, September 26, 2023 (on file with the Senate Regulated Industries Committee).

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues current open meeting exemption and a public records exemption beyond the current dates of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current a public records exemption without expansion. 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 requirements to be no broader than necessary to accomplish the stated purpose of the law. The purposes of the law are to protect information held by the Department of the Lottery, protect the security and integrity of Lottery operations, and to allow the Lottery to participate in the multistate lottery games. The exemptions do not appear to be broader than necessary to accomplish the purposes of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 24.1051 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.

FOR CONSIDERATION By the Committee on Regulated Industries

580-00502A-24

20247008pb

1 A bill to be entitled
 2 An act relating to review under the Open Government
 3 Sunset Review Act; amending s. 24.1051, F.S., relating
 4 to an exemption from public records requirements for
 5 certain information held by the Department of the
 6 Lottery, information about lottery games, personal
 7 identifying information of retailers and vendors for
 8 purposes of background checks, and certain financial
 9 information held by the department; removing the
 10 scheduled repeal of the exemption; providing an
 11 effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (1) of section 24.1051, Florida
 16 Statutes, is amended to read:
 17 24.1051 Exemptions from inspection or copying of public
 18 records.—
 19 (1)(a) The following information held by the department is
 20 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 21 of the State Constitution:
 22 1. Information that, if released, could harm the security
 23 or integrity of the department, including:
 24 a. Information relating to the security of the department's
 25 technologies, processes, and practices designed to protect
 26 networks, computers, data processing software, data, and data
 27 systems from attack, damage, or unauthorized access.
 28 b. Security information or information that would reveal
 29 security measures of the department, whether physical or

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30 virtual.
 31 c. Information about lottery games, promotions, tickets,
 32 and ticket stock, including information concerning the
 33 description, design, production, printing, packaging, shipping,
 34 delivery, storage, and validation of such games, promotions,
 35 tickets, and stock.
 36 d. Information concerning terminals, machines, and devices
 37 that issue tickets.
 38 2. Information that must be maintained as confidential in
 39 order for the department to participate in a multistate lottery
 40 association or game.
 41 3. Personal identifying information obtained by the
 42 department when processing background investigations of current
 43 or potential retailers or vendors.
 44 4. Financial information about an entity which is not
 45 publicly available and is provided to the department in
 46 connection with its review of the financial responsibility of
 47 the entity pursuant to s. 24.111 or s. 24.112, provided that the
 48 entity marks such information as confidential. However,
 49 financial information related to any contract or agreement, or
 50 an addendum thereto, with the department, including the amount
 51 of money paid, any payment structure or plan, expenditures,
 52 incentives, bonuses, fees, and penalties, shall be public
 53 record.
 54 (b) This exemption is remedial in nature, and it is the
 55 intent of the Legislature that this exemption apply to
 56 information held by the department before, on, or after May 14,
 57 2019.
 58 (c) Information made confidential and exempt under this

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59 subsection may be released to other governmental entities as
60 needed in connection with the performance of their duties. The
61 receiving governmental entity shall maintain the confidential
62 and exempt status of such information.

63 ~~(d) This subsection is subject to the Open Government~~
64 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
65 ~~repealed on October 2, 2024, unless reviewed and saved from~~
66 ~~repeal through reenactment by the Legislature.~~

67 Section 2. This act shall take effect October 1, 2024.

MEMORANDUM

FROM: Reginald D. Dixon, Chief of Staff
Florida Lottery

TO: Patrick L. "Booter" Imhof, Staff Director
Senate Regulated Industries Committee

RE: Overlap between the Public Records Exemptions Covering Cybersecurity

DATE: September 26, 2023

The Lottery was asked to ascertain whether the public records exemption pertaining to cybersecurity in section 119.0725, F.S. (the "Cybersecurity Exemption") covered public records exempted in section 24.1051(1)(a)1.a. – b., F.S (the "Lottery Exemption"). The purpose of this analysis was to determine whether the Lottery Exemption should be amended in a way that would eliminate the overlap with the Cybersecurity Exemption, while maintaining the overall scope of the information exempted under current law. As discussed below, Lottery and Cybersecurity Exemptions arguably cover separate categories of information. Accordingly, the Lottery recommends re-enacting the Lottery Exemption in its current form.

Broadly speaking, there are arguably three categories of information protected by the Cybersecurity Exemption and the Lottery Exemption. The Cybersecurity Exemption covers information that falls into either one of two categories: (1) information pertaining to the technology used by an agency,¹ and (2) information pertaining to actions taken by an agency in response to a cyberattack, such as detecting and investigating cyberattacks.² By contrast, the Lottery Exemption arguably exempts a third category of information, (3) information pertaining to precautions taken to prevent a cyberattack from occurring.³

¹ Section 119.075(2)(b) protects information related to "critical infrastructure" and section 119.0725(2)(d) exempts information pertaining to "network schematics, hardware and software configurations, or encryption information." Arguably this is limited to information about the technology itself.

² Section 119.0725(2)(d) exempts information that "identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents . . ." This information is arguably limited to the actions taken by an agency in response to a cyberattack.

³ Subsection (1)(a)1.a., exempts information related the "security of the [Lottery's] technologies, processes and practices designed to protect networks, computers, data processing software, data, and data systems from attack, damage or unauthorized access," and subsection (1)(a)1.b., exempts information that would reveal physical or virtual security measures taken by the Lottery. Arguably, these exemptions emphasize precautionary measures designed to prevent cyberattacks, as opposed to information about the specific technology used by the Lottery, or the methods used to respond to a cyberattack. Moreover, subsection (1)(a)1.b., arguably goes beyond the prevention of cyberattacks and extends to Lottery security more generally.

Admittedly, there is possibly some overlap between these three categories. For example, information about the technology used by an agency could identify actions that would be taken in response to a cyberattack, or precautionary measures taken to prevent one. Likewise, information pertaining to precautionary measures could reveal information about how an agency would respond to a cyberattack, and vice versa. However, by and large, the three categories identified above are arguably geared toward protecting different kinds of information. *See generally* the State Cybersecurity Act, § 282.318, F.S. (separately addressing “protection procedures,” “detection processes” and “response and recovery protocols”).

Because there appears to be a reasonable argument that the Lottery and Cybersecurity Exemptions cover different categories of information, the Lottery recommends the Lottery re-enacting the Lottery Exemption in its current form.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Committee on Regulated Industries

Judge:

Started: 12/6/2023 8:30:14 AM

Ends: 12/6/2023 8:42:01 AM

Length: 00:11:48

8:31:24 AM Call to order; roll call; Quorum present
8:31:38 AM SB 364 by Sen. Collins
8:31:56 AM no questions
8:32:05 AM Lance Watson, Public Service Commission, waives in support
8:32:16 AM no debate
8:32:24 AM Bill reported favorably
8:32:31 AM SB 42 by Sen. Stewart
8:33:44 AM no questions
8:33:47 AM no appearance cards
8:33:51 AM no debate
8:33:58 AM Bill reported favorably
8:34:10 AM SB 92 by Sen. Hooper
8:36:16 AM no questions
8:36:22 AM Elyn Bogdanoff, International Yacht Brokers Assn., waives in support
8:36:27 AM no debate
8:36:32 AM Bill reported favorably
8:36:47 AM SPB 7006 by Regulated Industries
8:37:02 AM Kurt Schrader, Committee on Regulated Industries, explains the proposed bill
8:38:53 AM no questions
8:39:00 AM Jared Grigas, Fla. Assn. of Counties, waives in support
8:39:03 AM no debate
8:39:06 AM Sen Hooper moves that SPB 7006 be reported as a committee bill; motion adopted
8:39:26 AM Bill reported favorably as a committee bill
8:39:38 AM SPB 7008 by Regulated Industries
8:39:53 AM Mary Kraemer, Committee on Regulated Industries, explains the proposed bill
8:40:48 AM no questions
8:40:51 AM no appearance cards
8:40:54 AM no debate
8:40:57 AM Sen. Hooper moves SPB 7008 be reported as a committee bill; motion adopted
8:41:11 AM Bill reported favorably as committee bill
8:41:25 AM Sen. Jones requests vote after on tabs 1 and 2 in the affirmative
8:41:39 AM Sen. Hutson requests vote after on tab 2 in the affirmative
8:41:44 AM Sen. Bradley moves to adjourn
8:41:50 AM meeting is adjourned