

**CS/SB 220** by **TR, Simpson**; (Similar to CS/H 0145) Commercial Motor Vehicle Review Board

379092	A	S	RCS	GO, Legg	Delete everything after	03/23 03:04 PM
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**SB 1446** by **Richter**; (Similar to H 0997) Public Records/Department of Agriculture and Consumer Services

752452	D	S	RCS	GO, Latvala	Delete everything after	03/23 03:04 PM
228664	A	S	WD	GO, Latvala	Delete L.23 - 37:	03/23 03:04 PM
977250	A	S	WD	GO, Latvala	Delete L.81:	03/23 03:04 PM

**SB 7040** by **TR**; (Similar to H 7041) Public Records/Electronic Mail Addresses/Department of Highway Safety and Motor Vehicles

407984	A	S	RCS	GO, Legg	Delete L.19 - 49:	03/23 03:04 PM
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**SB 1304** by **Latvala**; (Similar to H 0371) Inspectors General

379686	A	S	RCS	GO, Latvala	Delete L.27 - 353:	03/23 03:04 PM
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**SPB 7056** by **GO**; Administrative Procedures

**SPB 7058** by **GO**; Administrative Procedures

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**  
**Senator Ring, Chair**  
**Senator Hays, Vice Chair**

**MEETING DATE:** Monday, March 23, 2015  
**TIME:** 1:30 —3:30 p.m.  
**PLACE:** James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

**MEMBERS:** Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<p><b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.</p>			
<p><b>Secretary of State</b></p>			
1	Detzner, Kenneth W. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 4 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<p>Presentation by the Agency for State Technology</p>			

2	<p><b>CS/SB 220</b>                      Transportation / Simpson                      (Similar CS/H 145)</p>	<p>Commercial Motor Vehicle Review Board; Deleting a provision authorizing any officer of the Florida Highway Patrol to require that a vehicle be driven to the nearest weigh station or public scales under certain circumstances; deleting a provision requiring the officer to weigh the vehicle at fixed scales rather than by portable scales upon a request by the vehicle driver under certain circumstances; requiring the officer issuing the citation to escort the driver and attend the reweighing; requiring the Department of Transportation to provide space and video conference capability at each district office to enable a person requesting a hearing to appear remotely before the board, etc.</p>	<p>Fav/CS                      Yeas 4 Nays 0</p>
		<p>TR     03/12/2015 Fav/CS                      GO                      FP</p>	

**COMMITTEE MEETING EXPANDED AGENDA**Governmental Oversight and Accountability  
Monday, March 23, 2015, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 1446</b> Richter (Similar H 997, Compare CS/H 995, Link CS/S 1444)	Public Records/Department of Agriculture and Consumer Services; Providing an exemption from public records requirements for information received by the Department of Agriculture and Consumer Services from another state or federal agency and which is otherwise confidential or exempt pursuant to the laws of the other state or federal law; providing an exemption from public records requirements for information received or developed by the department as part of an investigation with another state or federal agency; providing for future legislative review and repeal; providing a statement of public necessity, etc.  CM 03/16/2015 Favorable GO RC	Fav/CS Yeas 4 Nays 0
4	<b>SB 7040</b> Transportation (Similar H 7041)	Public Records/Electronic Mail Addresses/Department of Highway Safety and Motor Vehicles; Providing an exemption from public records requirements for electronic mail addresses collected by the Department of Highway Safety and Motor Vehicles; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.  GO RC	Fav/CS Yeas 4 Nays 0
5	<b>SB 1304</b> Latvala (Similar H 371)	Inspectors General; Authorizing the Chief Inspector General or his or her designee to issue and enforce subpoenas under certain circumstances; providing additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general and staff; requiring all personnel to comply with requests of agency inspectors general under penalty of loss of employment; specifying that disclosure of certain information to agency inspectors general does not constitute a waiver of attorney-client privilege, etc.  GO AGG FP	Fav/CS Yeas 4 Nays 0
Consideration of proposed bill:			
6	<b>SPB 7056</b>	Administrative Procedures; Revising requirements for the annual review of agency rules; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws, etc.	Submitted as Committee Bill Yeas 3 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability  
Monday, March 23, 2015, 1:30 —3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Consideration of proposed bill:

7	<b>SPB 7058</b>	Administrative Procedures; Revising requirements for the content of notices of rule development; revising requirements for substantially affected persons to submit proposals for lower cost regulatory alternatives to a proposed rule following a notice of change; requiring a petition to include a statement explaining the prospective economic impact of the establishment of a proposed community development district, etc.	Submitted as Committee Bill Yeas 3 Nays 0
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Other Related Meeting Documents

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*Amended*



**RICK SCOTT**  
GOVERNOR

RECEIVED  
15 FEB 25 PM 1:18  
DIV. OF ELECTIONS  
SECRETARY OF STATE

February 24, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

This letter is to notify the Department of State of your amended reappointment as Secretary of the Department of State under the provisions of Section 20.10, Florida Statutes. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/vh

# QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

1/2/15

1. Name: Mr Netzner Kenneth W  
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 500 So Bronough 1st Floor Tallahassee  
Florida 32399 850 2456504  
STREET OFFICE# CITY  
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: Leon  
Florida 32309  
STREET CITY COUNTY  
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business  Residence  Fax # 850 2456125  
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>Tallahassee</u>	<u>FL</u>	<u>1995</u>	<u>2012</u>
<u>Tallahassee</u>	<u>FL</u>	<u>2012</u>	<u>current</u>

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO

5. Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_  
 6. Social Security Number: \_\_\_\_\_  
 7. Driver License Number: \_\_\_\_\_ Issuing State: Florida  
 8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain

9. Are you a United States citizen? Yes  No  If "No" explain:

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1971

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of registration: Leon B. Current party affiliation: Republican

12. Education

A. High School: Munster, HS Munster, In. Year Graduated: 1971  
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
<u>St Pete Jr College</u>	<u>08/71 - 05/73</u>	<u>AA</u>
<u>Florida State University</u>	<u>08/73 - 05/75</u>	<u>BA</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of service: N/A  
B. Branch or component: N/A  
C. Date & type of discharge: N/A

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
<u>2/2000</u>	<u>Volusia Co</u>	<u>Reckless Driving</u>	<u>No - contest</u>
<u>* (Not sure if penalty was more than 150<sup>00</sup>)</u>			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>Dept of State</u>	<u>Government</u>	<u>Secretary</u>	<u>2/17/12 - Current</u>
<u>Ken Metzner Gov'l Affairs</u>	<u>Gov'l Affairs/Not Consulting</u>	<u>Sole Proprietor</u>	<u>2003 - 2/17/12</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
<u>Sec of State</u>	<u>State of FL (DAS)</u>	<u>2/17/12 - Current</u>
<u>Sec of State</u>	<u>State of FL (DAS)</u>	<u>01/07/03 - 03/03/03</u>
<u>Chief of Staff</u>	<u>State of FL (DAS)</u>	<u>08/05/02 - 01/06/03</u>
<u>Dir. Leg/Policy Affairs</u>	<u>Attorney General Office</u>	<u>1979 - 1985</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Previous experience in the office of Attorney General  
is Director of Legislative Affairs for 6 years followed  
by many years of working in the private sector  
and then returning to government as chief of staff  
to the SOS and subsequent appointment by then  
Governor Bush as SOS, then appointed by Governor Scott

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Identify all association memberships and association offices held by you that relate to this appointment:

NIASS  
Enterprise FI  
FI Tax Watch Center for FI Citizenship

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
SOS	01/07/03 - 03/03/03		State of FL
SOS	02/17/12 - current		State of FL



B. If your service was on an appointed board(s), committee(s), or council(s):

- (1) How frequently were meetings scheduled: \_\_\_\_\_  
(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

- A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_  
B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

- A. Title of Office: Secretary of State  
B. Term of Appointment: 2/17/12 - Current  
C. Confirmation results: Confirmed

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
<u>Concealed Weapon</u>	<u>W1408347</u>	<u>DACS</u>	<u>4/23/14</u>
<u>Notary Commission</u>	<u>1346609</u>	<u>Gov. Scott</u>	<u>8/16/12</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
<u>Ken Detzner</u>	<u>Sole Proprietor</u>	<u>Consultant to Dept of Legal Affairs / Out Spill</u>

- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
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26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
FL Legislature	Dep of State
FL Legislature	Williams Family Interest
	Career Edge, Manatee / Sarasota
	Children Magic Inc

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Jim Smith			
Toni Jennings			
Lewis Beard			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years; the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
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NO			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:


30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

# CERTIFICATION

## STATE OF FLORIDA, COUNTY OF

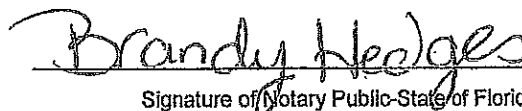
Before me, the undersigned Notary Public of Florida, personally appeared \_\_\_\_\_, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me

this 6<sup>th</sup> day of January, 2015



Signature of Notary Public-State of Florida



**BRANDY HEDGES**  
MY COMMISSION # FF 095006  
EXPIRES: March 6, 2018  
Bonded Thru Budget Notary Services

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 3-6-2018

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

(seal)

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

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IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0158

Amended

8

A black and white copy of this document is not official

2260

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

*Ken Detzner*

is duly appointed

**Secretary,  
Department of State**

for a term beginning on the  
Sixth day of January, A.D., 2015,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Fifth day of February, A.D., 2015*



*Ken Detzner*

Secretary of State

DSD 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 document

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPT. OF STATE

2015 JAN 21 AM 11:02

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

STATE OF FLORIDA

County of

Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary of State  
(Title of Office).

on which I am now about to enter, so help me God.

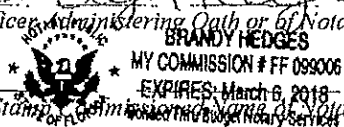
[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Ken Detzner

Signature

Sworn to and subscribed before me this 21 day of January, 15

Brandy Hedges  
Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

500 So. Bronaugh  
Street or Post Office Box

Tallahassee, Florida  
City, State, Zip Code

32399

Ken Detzner  
Print name as you desire commission issued

Ken Detzner  
Signature

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Kenneth W. Detzner  
Secretary of State

**NOTICE OF HEARING**

TO: Secretary Kenneth W. Detzner

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 23, 2015, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 1:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 18th day of March, 2015

Committee on Governmental Oversight and  
Accountability

  
\_\_\_\_\_  
Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms





THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

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**CHAIR:**

**Please raise your right hand and be sworn in as a witness.**

**Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?**

**WITNESS'S NAME:** Kenneth Detzner

**ANSWER:** "I DO"

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Governmental Oversight

**DATE:** 3/23/15



# **Senate Committee on Government Oversight and Accountability**

March 23, 2015



Jason M. Allison,  
Executive Director



## Senate Committee on Government Oversight and Accountability

The Agency for State Technology was established in 2014 by the Florida Legislature to oversee the state's essential technology projects and house Florida's Chief Information Officer. The agency will maximize IT resources, saving taxpayer dollars and delivering more efficient and effective constituent services in the Sunshine State.

Within the AST the legislation created:

- State Chief Information Officer (CIO)
- Key leadership positions to accomplish IT goals for Florida
- Technology Advisory Council and
- The State Data Center (SDC) through the merger of the Northwood and Southwood data centers



## Senate Committee on Government Oversight and Accountability

Duties of AST include:

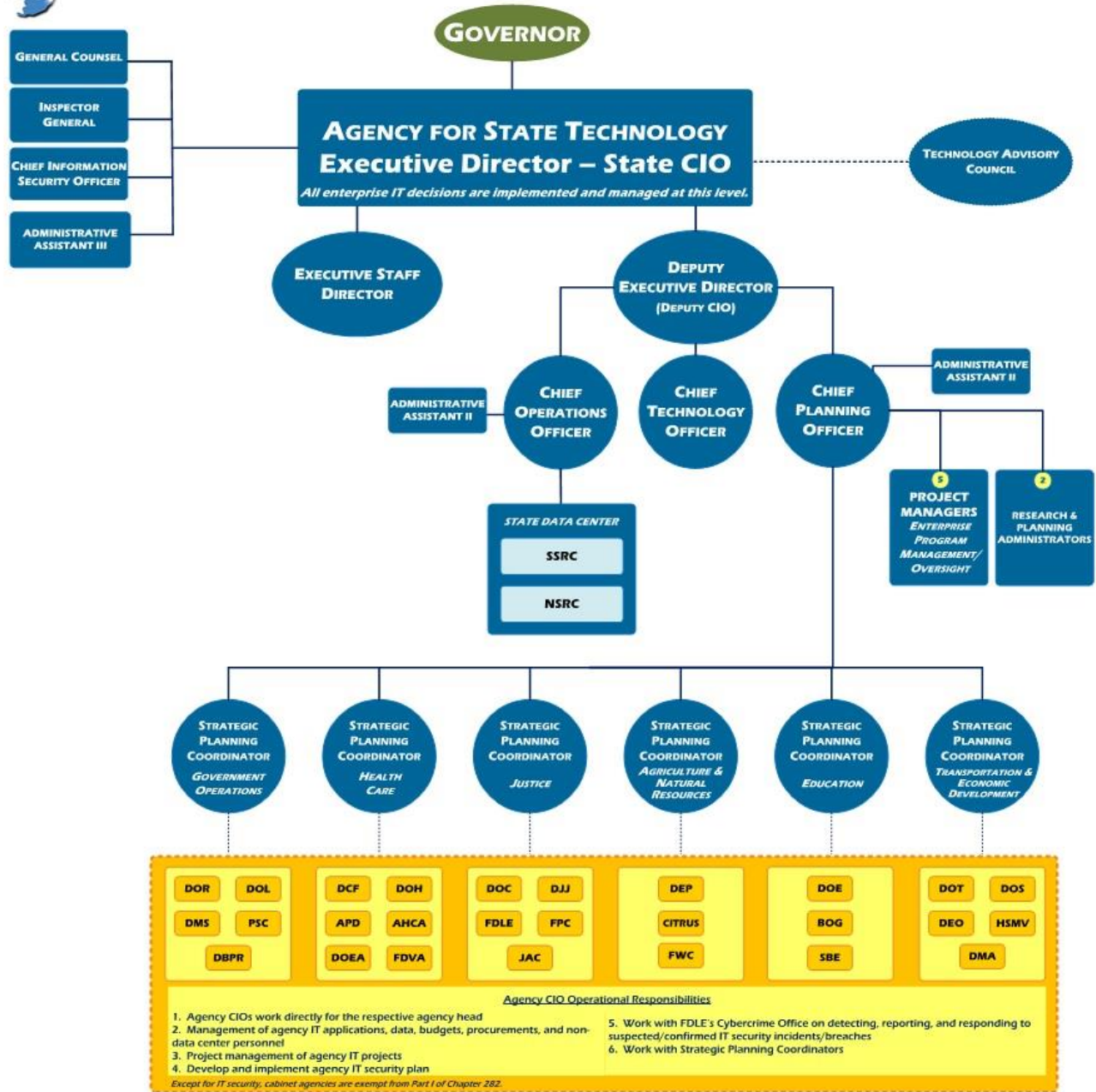
- Developing and implementing IT architecture standards
- Providing operational management and oversight of the State Data Center (SDC)
- Performing oversight on IT projects with total costs of \$10 million or more;
- Identifying opportunities for standardization and consolidation of IT services that support common business functions.

Since 7/1/2014 focused on:

- Hiring
- Legislative deliverables
  - Operational Assessment
  - Risk Assessment
  - Data Feasibility Study
- Assessing SDC infrastructure operational capabilities



# Senate Committee on Government Oversight and Accountability





## Senate Committee on Government Oversight and Accountability

### Legislative Deliverables

#### Operational Assessment:

- Findings presented to Governor's office and Legislature by February 1, 2015
- Evaluation of duplicated positions and potential reductions or reclassifications
- Standardizing operational processes and cost recover methodologies

#### Risk Assessment:

- To analyze and provide recommendations for protecting the states information technology resources, data and information
- Findings to be presented June 30, 2015

#### State Data Feasibility Study:

- To analyze, evaluate, and provide recommendations for managing state government data in a manner that promotes interoperability and openness
- Findings to be presented June 1, 2015



## Senate Committee on Government Oversight and Accountability

# Assessment Results Foundation of Budget Request

- Over 77% of servers in the SDC are older than 5 years
- Over 30% of the Microsoft Windows Server environment will reach end of life by 7/14/2015
- AST is supporting 13 different backup systems within 8 different versions and over 50 media servers
- What does that mean?
- What do we need to do?



# Legislative Budget Request

## Fiscal Year 2015-2016

ISSUES BY PRIORITY		FY 2015-16 REQUEST	RECURRING	NON- RECURRING
1	Complete Consolidation of Agency Hardware into Standardized Platforms (36177C0)	1,072,774	754,774	318,000
2	Consolidate and Expand Storage & Backup Infrastructure (36178C0)	2,350,679	2,033,395	317,284
3	Consolidate State Data Center Operations - AST (36179C0)	782,604	372,604	410,000
4	Stabilize and Support Data Center Power Infrastructure (36187C0)	356,000	91,000	265,000
5	Consolidate and Optimize Network Infrastructure (36181C0)	302,000	25,000	277,000
6	Consolidate and Optimize Database Platform Operations (36182C0)	850,926	447,671	403,255
7	Consolidate and Optimize Software Licenses (36183C0)	924,754	924,754	-
8	Consolidate and Optimize Security Infrastructure (36184C0)	318,250	288,250	30,000
9	Reapproval of Expansion of Enterprise Backup Phase 2 (36188C0)	588,632	588,632	-
10	Agency for State Technology Continuity of Operations Services (36186C0)	295,197	288,447	6,750
<b>AGENCY FOR STATE TECHNOLOGY TOTAL BUDGET ISSUES</b>		<b>\$7,841,816</b>	<b>\$5,814,527</b>	<b>\$2,027,289</b>





# Project Management Oversight

<b>AHCA</b>	<b>Medicaid Management (FMMIS) Evaluation</b>
<b>DOE</b>	<b>Statewide Longitudinal Data System</b>
<b>DFS</b>	<b>FLAIR &amp; CMS Replacement</b>
<b>DOH</b>	<b>Upgrade MQA Licensure &amp; Regulatory &amp; Online Systems</b>
<b>HSMV</b>	<b>Motorist Modernization Phase I</b>
<b>FDLE</b>	<b>Replace Computerized Criminal History System (CCH)</b>
<b>DOC</b>	<b>Electronic Timekeeping Project</b>
<b>DEO</b>	<b>Workforce Information System</b>
<b>DOT</b>	<b>Work Program Integration Initiative Project</b>
<b>OEL</b>	<b>Enhanced Field System (EFS) Replacement Project</b>



# Agency Rule Development

- Notice of Development of rulemaking was published in the Florida Administrative Register on December 22, 2014. Included in the notice was the date the rule development workshops for Project Management and IT Security.
- Rules development workshops were conducted on Thursday March 5, 2015 and Friday March 6, 2015, at the Betty Easley Center.
- Feedback has been received and incorporated. AST anticipates proceeding to Notice of Proposed rule phase of rulemaking.



# SEEKING SUNSHINE IN THE CLOUD

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 Ed Gonzalez Loumiet 12 Mar  
@gonzalezloumiet  
It was great meeting w/ Jason and @AST\_Florida team at @FLTechCouncil kickoff event in #Tallahassee. @uberops is ready

Tweet to @AST\_Florida

## Florida Agency for State Technology (AST)

The Agency for State Technology (AST) was established in 2014 by the Florida Legislature to oversee the state's essential technology projects and house Florida's Chief Information Officer. The agency will maximize IT resources, saving taxpayer dollars and delivering more efficient and effective constituent services in the Sunshine State.

Per Florida Statute, the AST is now the parent agency for the State Data Center, which consists of the former Northwood Shared Resource Center (NSRC) and the Southwood Shared Resource Center (SSRC), now called AST-Northwood and AST-Southwood, and are transitioning to functioning as one unit. All agency customers for both data center locations will not have any change in their customer status nor in the services they currently receive from the data center.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/2015  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic Agency for State Technology Overview

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

Name Jason M. Allison

Job Title Executive Director, State CIO

Address 4050 Esplanade Way  
Street

Phone (850) 412-6050

TLH FL 32302  
City State Zip

Email jason.allison@ast.mylorida.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

**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 Governmental Oversight and Accountability

---

BILL: CS/CS/SB 220

INTRODUCER: Governmental Oversight and Accountability Committee; Transportation Committee and Senator Simpson

SUBJECT: Commercial Motor Vehicle Review Board

DATE: March 24, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>FP</u>	<u>                    </u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 220 addresses various issues relating to enforcement of commercial motor vehicle laws. The bill:

- Authorizes a driver of a commercial motor vehicle that receives an overweight citation for excess weight measured by portable scales to proceed to the next weigh station or public scales for verification of weight;
- Revokes the citation if the vehicle is found to be in compliance with weight requirements;
- Revises the membership, and related provisions, of the Commercial Motor Vehicle Review Board by adding four additional members with business experience in the private sector, three appointed by the Governor and one appointed by the Commissioner of Agriculture;
- Requires the Department of Transportation (DOT) to provide video conference capability at each of its district offices to enable a person requesting a hearing before the Commercial Motor Vehicle Review Board to appear remotely; and
- Makes a technical correction by inserting a cross-reference.

**II. Present Situation:**

**Weighing of Commercial Motor Vehicles and Loads**

Under current law, any officer of the Florida Highway Patrol with reason to believe the weight of a commercial motor vehicle and its load is unlawful is authorized to stop and have the vehicle

weighed by means of either portable or fixed scales. The officer or the driver may require the vehicle to be driven to the nearest fixed scale at a weigh station or public scales if such a facility is located within five miles.<sup>1</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) advises that its portable scales are tested annually. To meet certification requirements, each portable scale must meet maintenance tolerance specifications set by the manufacturer, which generally allow for a deviation of only 1.5 percent to 3 percent scale tolerance.<sup>2</sup> By statute, the weight limits established in s. 316.535, F.S., must include a 10 percent scale tolerance.<sup>3</sup>

### **Review of Commercial Motor Vehicle Weight, Size, and Safety Penalties**

Law enforcement officers of various agencies<sup>4</sup> and DOT weight inspectors, are authorized to enforce current laws and rules relating to commercial motor vehicle weight, size, and safety. Various penalties are imposed for violations of statutory weight and size limitations and safety requirements. All collected penalties are ultimately deposited into the State Transportation Trust Fund and used to repair and maintain the state's roads and for enforcement of the limitations and requirements.<sup>5</sup>

The Commercial Motor Vehicle Review Board (Review Board) is a statutorily created body established within the DOT.<sup>6</sup> The Review Board is authorized to hear challenges to any penalty imposed upon any commercial motor vehicle or person relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, to violations of safety regulations, and to violations of width, height, and length.<sup>7</sup> Any person upon whom a civil penalty is imposed may apply to the Review Board for a hearing, and the Review Board is broadly authorized to modify, cancel, revoke, or sustain such penalties.<sup>8</sup>

### **Review Board Membership**

The Review Board has three permanent members, the Secretary of Transportation, the Executive Director of DHSMV, and the Commissioner of Agriculture (or their designees).<sup>9</sup> The Secretary of Transportation is the chair and is responsible for administrative functions of the Review Board.<sup>10</sup> Each permanent member may also designate one additional person to be a member.<sup>11</sup>

---

<sup>1</sup> Section 316.545(1), F.S.

<sup>2</sup> Telephone conversation with DHSMV staff, March 10, 2015.

<sup>3</sup> Section 316.545(2)(a), F.S., provides that the term "scale tolerance" means the allowable deviation from legal weights established in s. 316.535."

<sup>4</sup> See s. 316.640, F.S.

<sup>5</sup> See ss. 316.3025(7)(b), 316.516(5), 316.545(6), and 316.550(11), F.S. Also, see Rule 14A-1.004, F.A.C.

<sup>6</sup> Section 316.545(7), F.S.

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

<sup>8</sup> Section 316.545(8), F.S.

<sup>9</sup> Section 316.545(7), F.S.

<sup>10</sup> Section 316.545(7)(a), F.S.

<sup>11</sup> Section 316.545(7)(b), F.S. DOT advises no such additional members have ever been appointed to the Review Board. Telephone conversation with DOT Legislative Staff, March 9, 2015.

Responsibilities may be carried out by meeting as a single group or as subgroups that consist of one representative of each permanent member.<sup>12</sup>

### **Review Board Procedure**

The Review Board is authorized to hold sessions and conduct proceedings at any place within the state.<sup>13</sup> By rule, the Review Board schedules meetings based on a sufficient number of requests for review to justify the expense of holding a meeting, but no less than six meetings per year are scheduled at various locations throughout the state.<sup>14</sup>

Any person wishing to have a penalty considered by the Review Board must submit a written request for hearing no later than 60 days after the date on the Notice of Violation.<sup>15</sup> The Review Board determines the location of each meeting.<sup>16</sup> However, any person may request in writing no less than 14 days prior to a scheduled meeting.<sup>17</sup>

- To have a review of his or her case be held at a specific city at which the Review Board regularly meets;
- To be heard at the next meeting held in the geographic area of the state in which his or her principal place of business is located; or
- To be heard at the next meeting of the Review Board, regardless of the geographic area.

The Review Board generally considers only penalties that have been paid.<sup>18</sup> However, the Review Board will consider unpaid penalties if review occurs at its next meeting, regardless of location.<sup>19</sup> Testimony or other evidence supporting the modification, cancellation, or revocation of a penalty will be considered.<sup>20</sup>

A person may appear before the Review Board in person, through an authorized representative, or through legal counsel.<sup>21</sup> Additionally, no appearance is required at all if the person submits evidence or arguments no less than 14 days prior to the scheduled hearing.<sup>22</sup> If a person does not appear and does not submit evidence or arguments, the penalty will be sustained.<sup>23</sup> Continuances may be granted upon a showing of good cause.<sup>24</sup>

---

<sup>12</sup> Section 316.545(7)(c), F.S.

<sup>13</sup> Section 316.545(7)(e), F.S.

<sup>14</sup> Rule 14A-1.004(1), F.A.C. Also, see DOT website for the Review Board's 2015 meeting schedule, indicating 12 meetings, one each month: four in Fort Lauderdale, two in Tampa, four in Tallahassee, and two in Orlando:

[http://www.dot.state.fl.us/trafficoperations/Traf\\_Incident/CMVRB/CMVRB.shtm](http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm).

<sup>15</sup> Rule 14A-1.004(3), F.A.C.

<sup>16</sup> Rule 14A-1.004(1)(b), F.A.C.

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

<sup>18</sup> Rule 14A-1.004(1)(a), F.A.C.

<sup>19</sup> Rule 14A-1.004(1)(c), F.A.C.

<sup>20</sup> Rule 14A-1.004(1)(a), F.A.C.

<sup>21</sup> Rule 14A-1.004(4), F.A.C.

<sup>22</sup> Rule 14A-1.004(4)(a), F.A.C.

<sup>23</sup> Rule 14A-1.004(4)(b), F.A.C.

<sup>24</sup> Rule 14A-1.004(6), F.A.C.

The Review Board is required to render its written, final decision and notify the person requesting the hearing within 30 days after the meeting.<sup>25</sup> A rehearing may be requested within 14 days only if additional evidence is presented.<sup>26</sup> If the Review Board decision results in any refund, a refund check is issued by the DHSMV “in a timely manner.”<sup>27</sup>

### **Recent Review Board Hearing and Refund Data**

DOT advises:

In FY 2013/2014, the [Review] Board heard 1172 cases that represented a total of \$1,363,088.45 in fines. Out of these 1172 cases, relief was granted on 454 of the cases, or 38.74 percent, for a total refunded amount of \$552,332.94, or 40.23 percent. The total amount of citations issued and fines collected for 2014 was 80,662 citations and \$9,284,465.20, which approximates to 1.4 percent of the citations issued and 14.79 percent of the dollars being reviewed by the Board.<sup>28</sup>

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

**Section 1** amends s. 316.545(2)(a), F.S., to allow a driver issued a citation for exceeding weight limits as measured by portable scales to proceed to the nearest weigh station or public scale for verification of weight. The citation is revoked if the vehicle is found to be in compliance with applicable weight requirements at the fixed scale. The driver may submit by U.S. mail the portable scale citation and the certified scale ticket to the Review Board for revocation of the citation. Authorization of an officer to weigh a vehicle and load by either fixed or portable scales remains in place.

**Section 2** amends s. 316.545(7), effective October 1, 2015, to revise the membership of the Review Board by adding four additional members. The Governor appoints one member each from the road construction industry and the trucking industry, and one member with a general business or legal background. The Commissioner of Agriculture appoints one member from the agriculture industry. All four members serve two-year terms, must be registered voters and citizens of Florida, and must possess business experience in the private sector. Four members constitute a quorum, and the vote of four members is necessary for any action taken.

Vacancies during the term of one of these members is filled only for the remainder of the unexpired term. A vacancy does not impair the right of a quorum to exercise the rights and duties of the Review Board. The Governor may remove any of these members for misconduct, malfeasance, misfeasance, or nonfeasance in office. Each member is required to take an oath to perform board duties honestly, faithfully, impartially and, without neglect.

---

<sup>25</sup> Rule 14A-1.004(7), F.A.C.

<sup>26</sup> *Id.*

<sup>27</sup> See the DOT website: [http://www.dot.state.fl.us/trafficoperations/Traf\\_Incident/CMVRB/CMVRB.shtm](http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm). Last visited March 10, 2015.

<sup>28</sup> See the 2015 DOT Legislative Bill Analysis for SB 220. On file in the Senate Transportation Committee and Senate Governmental Oversight and Accountability Committee.



In addition, the FDOT is required to provide space and video conferencing capability at each of the FDOT district offices to enable a person requesting a hearing before the Review Board to appear remotely, as an alternative to physical appearance or any other method of appearance authorized by rule.

This section also makes a technical correction by inserting a cross-reference.

**Section 3** requires the appointment of the additional four members to be made by September 1, 2015, for terms beginning October 1, 2015.

**Section 4** provides the bill takes effect July 1, 2015, except as otherwise provided.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A positive but indeterminate fiscal impact may be realized by the private sector if the revised membership of the Review Board results in increased refunds. Appointed board members may experience loss of income while performing services on the Review Board.

C. Government Sector Impact:

A negative indeterminate fiscal impact may be realized by the state if the revised membership of the Review Board results in increased refunds of violations. In addition, more penalties may be revoked if the fixed scales indicate that the truck was in compliance with the weight requirements.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 316.545 of the Florida Statutes:

**IX. Additional Information:**

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

**CS/CS by Governmental Oversight and Accountability on March 23, 2015:**

The CS/CS modifies the CS by authorizing a driver of a commercial motor vehicle that receives an overweight citation for excess weight measured by portable scales to proceed to the next weigh station or public scales for verification of weight. If the vehicle is found to be in compliance with the weight requirements at the fixed scale, the driver may submit by U.S. mail the portable scale citation and the certified scale ticket to the Review Board for revocation of the citation.

**CS by Transportation on March 12, 2015:**

The CS modifies the bill by:

- Authorizing a driver of a commercial motor vehicle that receives an overweight citation for excess weight measured by portable scales to request an escort to the nearest fixed scale for a re-weighing;
- Voiding the citation if the vehicle is found to be in compliance with applicable weight requirements at the fixed scale;
- Requiring DOT to provide video conference capability at each of its district offices to enable a person requesting a hearing before the Review Board to appear remotely; and
- Making a technical cross-reference insertion.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (a) of subsection (2) of section  
316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor  
fuel tax enforcement; inspection; penalty; review.—

(2) (a) Whenever an officer of the Florida Highway Patrol or  
weight inspector of the Department of Transportation, upon



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11 weighing a vehicle or combination of vehicles with load,  
12 determines that the axle weight or gross weight is unlawful, the  
13 officer may require the driver to stop the vehicle in a suitable  
14 place and remain standing until a determination can be made as  
15 to the amount of weight thereon and, if overloaded, the amount  
16 of penalty to be assessed as provided herein. However, any gross  
17 weight over and beyond 6,000 pounds beyond the maximum herein  
18 set shall be unloaded and all material so unloaded shall be  
19 cared for by the owner or operator of the vehicle at the risk of  
20 such owner or operator. Except as otherwise provided in this  
21 chapter, to facilitate compliance with and enforcement of the  
22 weight limits established in s. 316.535, weight tables published  
23 pursuant to s. 316.535(7) shall include a 10-percent scale  
24 tolerance and shall thereby reflect the maximum scaled weights  
25 allowed any vehicle or combination of vehicles. As used in this  
26 section, scale tolerance means the allowable deviation from  
27 legal weights established in s. 316.535. Notwithstanding any  
28 other provision of the weight law, if a vehicle or combination  
29 of vehicles does not exceed the gross, external bridge, or  
30 internal bridge weight limits imposed in s. 316.535 and the  
31 driver of such vehicle or combination of vehicles can comply  
32 with the requirements of this chapter by shifting or equalizing  
33 the load on all wheels or axles and does so when requested by  
34 the proper authority, the driver shall not be held to be  
35 operating in violation of said weight limits. When a driver is  
36 issued a citation for exceeding weight limits established in s.  
37 316.535 determined by means of portable scales, the driver may  
38 proceed to the next weigh station or public scales for  
39 verification of weight. If the vehicle is found to be in



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40 compliance with the weight requirements of this chapter at the  
41 fixed scale, the driver may submit by United States mail both  
42 the portable scale citation and certified scale ticket to the  
43 Commercial Motor Vehicle Review Board for revocation of the  
44 citation.

45 Section 2. Effective October 1, 2015, subsection (7) of  
46 section 316.545, Florida Statutes, is amended to read:

47 316.545 Weight and load unlawful; special fuel and motor  
48 fuel tax enforcement; inspection; penalty; review.—

49 (7) There is created within the Department of  
50 Transportation the Commercial Motor Vehicle Review Board,  
51 consisting of three permanent members who shall be the Secretary  
52 of ~~the Department of~~ Transportation, the executive director of  
53 the Department of Highway Safety and Motor Vehicles, and the  
54 Commissioner of Agriculture, or their authorized  
55 representatives, and four additional members appointed pursuant  
56 to paragraph (b), which may review any penalty imposed upon any  
57 vehicle or person under the provisions of this chapter relating  
58 to weights imposed on the highways by the axles and wheels of  
59 motor vehicles, to special fuel and motor fuel tax compliance,  
60 or to violations of safety regulations.

61 (a) The Secretary of ~~the Department of~~ Transportation or  
62 his or her authorized representative shall be the chair of the  
63 review board.

64 (b) The Governor shall appoint one member from the road  
65 construction industry, one member from the trucking industry,  
66 and one member with a general business or legal background. The  
67 Commissioner of Agriculture shall appoint one member from the  
68 agriculture industry. Each member appointed under this paragraph



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69 must be a registered voter and resident of the state and must  
70 possess business experience in the private sector. Members  
71 appointed pursuant to this paragraph shall each serve a 2-year  
72 term. A vacancy occurring during the term of a member appointed  
73 under this paragraph shall be filled only for the remainder of  
74 the unexpired term. Members of the board appointed under this  
75 paragraph may be removed from office by the Governor for  
76 misconduct, malfeasance, misfeasance, or nonfeasance in office  
77 ~~Each permanent member of the review board may designate one~~  
78 ~~additional person to be a member of the review board.~~

79 (c) Each member, before entering upon his or her official  
80 duties, shall take and subscribe to an oath before an official  
81 authorized by law to administer oaths that he or she will  
82 honestly, faithfully, and impartially perform the duties  
83 devolving upon him or her in office as a member of the review  
84 board and that he or she will not neglect any duties imposed  
85 upon him or her by s. 316.3025, s. 316.550, or this section ~~The~~  
86 ~~review board may execute its responsibilities by meeting as a~~  
87 ~~single group or as subgroups consisting of one authorized~~  
88 ~~representative of each permanent member.~~

89 (d) The chair of the review board is responsible for the  
90 administrative functions of the review board.

91 (e) Four members of the board constitute a quorum, and the  
92 vote of four members shall be necessary for any action taken by  
93 the board. A vacancy on the board does not impair the right of a  
94 quorum of the board to exercise all of the rights and perform  
95 all of the duties of the board.

96 (f) ~~(e)~~ The review board may hold sessions and conduct  
97 proceedings at any place within the state. As an alternative to



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98 physical appearance, and in addition to any other method of  
99 appearance authorized by rule, the Department of Transportation  
100 shall provide space and video conference capability at each  
101 district office to enable a person requesting a hearing to  
102 appear remotely before the board, regardless of the physical  
103 location of the board proceeding.

104       Section 3. The appointment of additional members to the  
105 Commercial Motor Vehicle Review Board in accordance with the  
106 changes made by this act to s. 316.545, Florida Statutes, shall  
107 be made by September 1, 2015, for terms beginning October 1,  
108 2015.

109       Section 4. Except as otherwise expressly provided in this  
110 act, this act shall take effect July 1, 2015.

111  
112

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

114 And the title is amended as follows:

115       Delete everything before the enacting clause  
116 and insert:

117                               A bill to be entitled  
118       An act relating to the Commercial Motor Vehicle Review  
119       Board; amending s. 316.545, F.S.; providing for an  
120       appeal to the board for an excess weight citation  
121       under certain circumstances; providing for citation  
122       revocation by the board; revising the membership of  
123       the board; providing for appointment of additional  
124       members by the Governor and the Commissioner of  
125       Agriculture; providing for terms of the additional  
126       members; providing qualifications for such members;



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127 providing for removal of members by the Governor under  
128 certain circumstances; providing for action by a  
129 quorum of the board; requiring the Department of  
130 Transportation to provide space and video conference  
131 capability at each district office to enable a person  
132 requesting a hearing to appear remotely before the  
133 board; requiring that the additional appointments be  
134 made by a specified date; providing effective dates.  
135



By the Committee on Transportation; and Senator Simpson

596-02196-15

2015220c1

1 A bill to be entitled  
 2 An act relating to the Commercial Motor Vehicle Review  
 3 Board; amending s. 316.545, F.S.; deleting a provision  
 4 authorizing any officer of the Florida Highway Patrol  
 5 to require that a vehicle be driven to the nearest  
 6 weigh station or public scales under certain  
 7 circumstances; deleting a provision requiring the  
 8 officer to weigh the vehicle at fixed scales rather  
 9 than by portable scales upon a request by the vehicle  
 10 driver under certain circumstances; authorizing a  
 11 driver to request to proceed to the nearest fixed  
 12 scale at an official weigh station or a certified  
 13 public scale when he or she is issued a citation for  
 14 exceeding weight limits; requiring the officer issuing  
 15 the citation to escort the driver and attend the  
 16 reweighing; voiding the citation if the vehicle or  
 17 combination of vehicles is found to be in compliance  
 18 with certain weight requirements; revising the  
 19 membership of the board; providing for appointment of  
 20 additional members by the Governor and the  
 21 Commissioner of Agriculture; providing qualifications  
 22 for such members; providing for terms of the  
 23 additional members; providing for removal of members  
 24 by the Governor under certain circumstances; requiring  
 25 each member to take an oath subject to certain  
 26 requirements; providing for action by a quorum of the  
 27 board; requiring the Department of Transportation to  
 28 provide space and video conference capability at each  
 29 district office to enable a person requesting a

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

596-02196-15

2015220c1

30 hearing to appear remotely before the board; requiring  
 31 that the additional appointments be made by a  
 32 specified date; providing effective dates.  
 33

34 Be It Enacted by the Legislature of the State of Florida:  
 35

36 Section 1. Subsection (1) and paragraph (a) of subsection  
 37 (2) of section 316.545, Florida Statutes, are amended to read:  
 38 316.545 Weight and load unlawful; special fuel and motor  
 39 fuel tax enforcement; inspection; penalty; review.—

40 (1) Any officer of the Florida Highway Patrol having reason  
 41 to believe that the weight of a vehicle and load is unlawful is  
 42 authorized to require the driver to stop and submit to a  
 43 weighing of the same by means of either portable or fixed scales  
 44 ~~and may require that such vehicle be driven to the nearest weigh~~  
 45 ~~station or public scales, provided such a facility is within 5~~  
 46 ~~highway miles. Upon a request by the vehicle driver, the officer~~  
 47 ~~shall weigh the vehicle at fixed scales rather than by portable~~  
 48 ~~scales if such a facility is available within 5 highway miles.~~  
 49 Anyone who refuses to submit to such weighing obstructs an  
 50 officer pursuant to s. 843.02 and is guilty of a misdemeanor of  
 51 the first degree, punishable as provided in s. 775.082 or s.  
 52 775.083. Anyone who knowingly and willfully resists, obstructs,  
 53 or opposes a weight and safety officer while refusing to submit  
 54 to such weighing by resisting the officer with violence to the  
 55 officer's person pursuant to s. 843.01 is guilty of a felony of  
 56 the third degree, punishable as provided in s. 775.082, s.  
 57 775.083, or s. 775.084.

58 (2) (a) Whenever an officer of the Florida Highway Patrol or

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59 weight inspector of the Department of Transportation, upon  
 60 weighing a vehicle or combination of vehicles with load,  
 61 determines that the axle weight or gross weight is unlawful, the  
 62 officer may require the driver to stop the vehicle in a suitable  
 63 place and remain standing until a determination can be made as  
 64 to the amount of weight thereon and, if overloaded, the amount  
 65 of penalty to be assessed as provided herein. However, any gross  
 66 weight over and beyond 6,000 pounds beyond the maximum herein  
 67 set shall be unloaded and all material so unloaded shall be  
 68 cared for by the owner or operator of the vehicle at the risk of  
 69 such owner or operator. Except as otherwise provided in this  
 70 chapter, to facilitate compliance with and enforcement of the  
 71 weight limits established in s. 316.535, weight tables published  
 72 pursuant to s. 316.535(7) shall include a 10-percent scale  
 73 tolerance and shall thereby reflect the maximum scaled weights  
 74 allowed any vehicle or combination of vehicles. As used in this  
 75 section, scale tolerance means the allowable deviation from  
 76 legal weights established in s. 316.535. Notwithstanding any  
 77 other provision of the weight law, if a vehicle or combination  
 78 of vehicles does not exceed the gross, external bridge, or  
 79 internal bridge weight limits imposed in s. 316.535 and the  
 80 driver of such vehicle or combination of vehicles can comply  
 81 with the requirements of this chapter by shifting or equalizing  
 82 the load on all wheels or axles and does so when requested by  
 83 the proper authority, the driver shall not be held to be  
 84 operating in violation of said weight limits. When a driver is  
 85 issued a citation for exceeding the weight limits established in  
 86 s. 316.535 as determined by means of portable scales, the driver  
 87 may request to proceed to the nearest fixed scale at an official

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88 weigh station or at a certified public scale for verification of  
 89 weight. The officer who issued the citation must escort the  
 90 driver at all times and must attend the reweighing. If the  
 91 vehicle or combination of vehicles is found to be in compliance  
 92 with the weight requirements of this chapter at the fixed scale,  
 93 the citation is void.

94 Section 2. Effective October 1, 2015, subsection (7) of  
 95 section 316.545, Florida Statutes, is amended to read:

96 316.545 Weight and load unlawful; special fuel and motor  
 97 fuel tax enforcement; inspection; penalty; review.—

98 (7) There is created within the Department of  
 99 Transportation the Commercial Motor Vehicle Review Board,  
 100 consisting of three permanent members who shall be the Secretary  
 101 of ~~the Department of~~ Transportation, the executive director of  
 102 the Department of Highway Safety and Motor Vehicles, and the  
 103 Commissioner of Agriculture, or their authorized  
 104 representatives, and four additional members appointed pursuant  
 105 to paragraph (b), which may review any penalty imposed upon any  
 106 vehicle or person under the provisions of this chapter relating  
 107 to weights imposed on the highways by the axles and wheels of  
 108 motor vehicles, to special fuel and motor fuel tax compliance,  
 109 or to violations of safety regulations.

110 (a) The Secretary of ~~the Department of~~ Transportation or  
 111 his or her authorized representative shall be the chair of the  
 112 review board.

113 (b) The Governor shall appoint one member from the road  
 114 construction industry, one member from the trucking industry,  
 115 and one member with a general business or legal background. The  
 116 Commissioner of Agriculture shall appoint one member from the

Page 4 of 6

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

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117 agriculture industry. Each member appointed under this paragraph  
 118 must be a registered voter and citizen of the state and must  
 119 possess business experience in the private sector. Members  
 120 appointed pursuant to this paragraph shall each serve a 2-year  
 121 term. A vacancy occurring during the term of a member appointed  
 122 under this paragraph shall be filled only for the remainder of  
 123 the unexpired term. Members of the board appointed under this  
 124 paragraph may be removed from office by the Governor for  
 125 misconduct, malfeasance, misfeasance, or nonfeasance in office  
 126 ~~Each permanent member of the review board may designate one~~  
 127 ~~additional person to be a member of the review board.~~

128 (c) Each member, before entering upon his or her official  
 129 duties, shall take and subscribe to an oath before an official  
 130 authorized by law to administer oaths that he or she will  
 131 honestly, faithfully, and impartially perform the duties  
 132 devolving upon him or her in office as a member of the review  
 133 board and that he or she will not neglect the duties imposed  
 134 upon him or her by s. 316.3025, s. 316.516, s. 316.550, or this  
 135 ~~section. The review board may execute its responsibilities by~~  
 136 ~~meeting as a single group or as subgroups consisting of one~~  
 137 ~~authorized representative of each permanent member.~~

138 (d) The chair of the review board is responsible for the  
 139 administrative functions of the review board.

140 (e) Four members of the board shall constitute a quorum,  
 141 and the vote of four members shall be necessary for any action  
 142 taken by the board. A vacancy on the board shall not impair the  
 143 right of a quorum of the board to exercise all of the rights and  
 144 perform all of the duties of the board.

145 ~~(f)~~(e) The review board may hold sessions and conduct

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146 proceedings at any place within the state. As an alternative to  
 147 physical appearance, and in addition to any other method of  
 148 appearance authorized by rule, the Department of Transportation  
 149 shall provide space and video conference capability at each  
 150 district office to enable a person requesting a hearing to  
 151 appear remotely before the board, regardless of the physical  
 152 location of the board proceeding.

153 Section 3. The appointment of additional members to the  
 154 Commercial Motor Vehicle Review Board in accordance with the  
 155 changes made by this act to s. 316.545, Florida Statutes, shall  
 156 be made by September 1, 2015, for terms beginning October 1,  
 157 2015.

158 Section 4. Except as otherwise expressly provided in this  
 159 act, this act shall take effect July 1, 2015.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

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

## JOINT COMMITTEE:

Joint Legislative Auditing Committee

## SENATOR WILTON SIMPSON

18th District

March 12, 2015

Honorable Jeremy Ring  
Committee on Governmental Oversight and Accountability  
525 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Ring,

Please place Senate Bill 220 relating to the Commercial Motor Vehicle Review, on the next Committee on Government Oversight and Accountability agenda.

Please contact my office with any questions. Thank you.

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

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

CC: Joe McVaney, Staff Director

## REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/15

Meeting Date

220

Bill Number (if applicable)

Topic Commercial Motor Vehicle Review

Amendment Barcode (if applicable)

Name Jim Spratt

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

Address PO Box 10011

Phone 850-228-1296

Street

TALLAHASSEE

City

FL

State

32302

Zip

Email Jim@megaclicstrategiesllc.com

Speaking:  For  Against  Information

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

Representing Florida Forestry Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/15  
Meeting Date

220  
Bill Number (if applicable)

Topic COMMERCIAL MOTOR VEHICLE REVIEW BOARD

Amendment Barcode (if applicable)

Name LANCE PIERCE

Job Title ASST. DIRECTOR OF STATE LEGISLATIVE AFFAIRS

Address 315 S. CALHOUN ST.

Phone 222-2587

Street

TALLAHASSEE

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing FLORIDA FARM BUREAU

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

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

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

### SENATOR WILTON SIMPSON

18th District

March 18, 2015

Honorable Jeremy Ring  
Committee on Government Oversight and Accountability  
525 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Ring,

I appreciate you including my legislation, Senate Bill 220, relating to the Commercial Motor Vehicle Review, on the March 23<sup>rd</sup>, on the Committee on Government Oversight and Accountability agenda. As you are aware, I will be chairing the Community Affairs Committee. I respectfully request that you allow my Legislative Assistant, Keaton Alexander to present the bill on my behalf if necessary.

Please do not hesitate to contact me if you or your staff have any questions.

Regards,

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

Wilton Simpson  
State Senator, 18<sup>th</sup> District

cc: Joe McVaney, Staff Director  
Allison Rudd, Committee Administrative Assistant

#### REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

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

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

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

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BILL: CS/SB 1446

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Richter

SUBJECT: Public Records/Department of Agriculture and Consumer Services

DATE: March 24, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1446 creates a new public records exemption for Department of Agriculture and Consumer Services (DACS). The exemption provides that criminal or civil intelligence, investigative information, or any other information held by DACS as part of a joint or multiagency examination with another state or federal agency will be confidential and exempt from public disclosure.

This exemption does not apply to information obtained or developed by DACS that would otherwise be available for public inspection if DACS performed an independent investigation.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

**II. Present Situation:**

**Public Records and Open Meetings Requirements**

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on



their behalf.<sup>1</sup> The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>2</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided by the Florida Constitution.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>5</sup> The Sunshine Law<sup>6</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>7</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>8</sup> An exemption must specifically state the public necessity justifying the exemption<sup>9</sup> and must be tailored to accomplish the stated purpose of the law.<sup>10</sup>

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

The Open Government Sunset Review Act ("OGSR Act") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>11</sup> The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(b).

<sup>3</sup> FLA. CONST., art. I, s. 24(b).

<sup>4</sup> Chapter 119, F.S.

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

<sup>6</sup> Section 286.011, F.S.

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

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

after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>12</sup>

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

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

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>17</sup>

The OGSR Act also requires specified questions to be considered during the review process.<sup>18</sup> In examining an exemption, the OGSR Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>20</sup>

### **The Department of Agriculture and Consumer Services**

The Department of Agriculture and Consumer Services (DACS) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACS regulates specific business activities, including commercial weight

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<sup>12</sup> Section 119.15(3), F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> Section 119.15(6)(b)1., F.S.

<sup>15</sup> Section 119.15(6)(b)2., F.S.

<sup>16</sup> Section 119.15(6)(b)3., F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

<sup>20</sup> Section 119.15(7), F.S.

loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.<sup>21</sup>

DACS investigates and regulates several professions in Florida. Most recently DACS's oversight and regulation of charitable organizations was significantly expanded to include oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors.<sup>22</sup>

Florida's public record laws currently make any information obtained by DACS in administrative and civil investigations of charitable organizations open to the public. According to DACS, this presents a hurdle to partnering with other state and federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS), because DACS cannot maintain the same level of privacy adopted and required by those federal and other state agencies.<sup>23</sup> As a result, DACS's investigations are hindered because it is often unable to gather pertinent information from, enter into confidentiality agreements with, or participate in multi-jurisdiction task forces with other state and federal agencies.

The FTC operates a Consumer Sentinel database that is protected from public record disclosure. Information from this database can only be provided to a state agency that agrees not to disseminate the information.<sup>24</sup> This database contains information on subjects relating to:

- Identity Theft,
- Do-Not-Call Registry Violations,
- Computers, the Internet, and Online Auctions,
- Telemarketing Scams,
- Advance-fee loans and credit scams,
- Immigration services,
- Sweepstakes, Lotteries, and Prizes,
- Business Opportunities and Work-at-home Schemes,
- Health and Weight Loss Products, and
- Debt Collection, Credit Reports, and Financial Matters.

Additionally, the Internal Revenue Service (IRS) has expressed a willingness to share information on a case-by-case basis should DACS be able to prevent disclosure of the information beyond DACS.<sup>25</sup> The IRS has access to tax filing information that might be valuable to DACS when investigating whether an organization is compliant with Florida law.

### III. Effect of Proposed Changes:

The bill makes confidential and exempt criminal or civil intelligence or investigative information held by DACS as part of a joint or multiagency examination or investigation with another state or federal agency. DACS will be able to obtain, use and release the information in accordance

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<sup>21</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

<sup>22</sup> See chapter 2014-122, L.O.F.

<sup>23</sup> Florida Department of Agriculture and Consumer Services, *HB 997 Agency Analysis*, (March 3, 2015) (on file with the Senate Committee on Commerce and Tourism).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

with conditions imposed by agreements DACS enters into with the other state or governmental entity.

This bill provides that DACS may release confidential and exempt information in furtherance of its official duties, and may release the information to another governmental agency in furtherance of that agency's official duties.

This exemption permits DACS to receive intelligence information from local, state and federal agencies who would otherwise be unable to share data with DACS. This change will strengthen relations between DACS and other local, state, and federal agencies that will be able to share confidential investigatory information with DACS.

The bill provides that this exemption does not apply to all departmental investigations and regulatory functions.<sup>26</sup> Currently, information from most department investigations are public records, and this exemption will not apply to information obtained or developed by DACS if DACS obtained the information through an investigation that it conducts independently of any confidential information shared by other local, state or federal governmental sources.

As required by the Florida Constitution, the bill also contains a public necessity statement. The public necessity statement explains that DACS is currently being excluded from sources of information because they lack the authority to maintain confidentiality of the information they receive. The public necessity statement provides that this exemption is necessary for DACS to be able to perform its regulatory duties more efficiently.

The bill's exemption will expire on October 2, 2020, pursuant to the OGSR Act, unless saved by the Legislature through reenactment.

This bill goes into effect on the same date as SB 1444 or similar legislation takes effect if such legislation is adopted in the same legislative session. SB 1444 and CS/SB 1446 do not appear to be directly related to each other. CS/SB 1446 exempts from public records certain types of investigatory information, while SB 1444 makes programmatic changes which do not appear to reference any need for a change in public records laws.

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

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

None.

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<sup>26</sup> Senate Bill #1446- Public Records/Department of Agriculture and Consumer Services Bill Analysis, Dated March 3, 2015, on line at ABARS website.

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

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

**Public Necessity Statement**

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. Therefore, this bill includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to confidential criminal or civil intelligence or investigative information or any other information obtained from another state or federal regulatory agency as part of a multiagency examination or investigation. This bill does not exempt any information that DACS develops from its own investigations. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Aggrieved members of the public may see a quicker resolution, including payment of restitution, to their complaints against fraudulent or unlicensed activity regulated by DACS,

**C. Government Sector Impact:**

The bill may make DACS's execution of its regulatory duties more efficient and thus less costly.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 570.077 of the Florida Statutes.

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

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

**CS by Governmental Oversight and Accountability on March 23, 2015:**

The CS makes the exemption more concise and provides DACS the authority to release confidential and exempt information for certain purposes. The CS also amends the public necessity statement to conform to the rest of the bill and adds a missing bill number in the contingent effective date clause.

**B. Amendments:**

None.



752452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 570.077, Florida Statutes, is created to  
read:

570.077 Confidentiality of intelligence or investigative  
information.—

(1) Criminal or civil intelligence or investigative  
information, or any other information, held by the department as



752452

11 part of a joint or multiagency examination or investigation with  
12 another state or federal regulatory, administrative, or criminal  
13 justice agency is confidential and exempt from s. 119.07(1) and  
14 s. 24(a), Art. I of the State Constitution. The department may  
15 obtain, use, and release the information in accordance with the  
16 conditions imposed by the joint or multiagency agreement.

17 (2) The department may release information that is made  
18 confidential and exempt under subsection (1):

19 (a) In the furtherance of its official duties and  
20 responsibilities.

21 (b) To another governmental agency in the furtherance of  
22 its official duties and responsibilities.

23 (3) The public record exemption provided in subsection (1)  
24 does not apply to information held by the department as part of  
25 an independent examination or investigation conducted by the  
26 department.

27 (4) This section is subject to the Open Government Sunset  
28 Review Act in accordance with s. 119.15 and shall stand repealed  
29 on October 2, 2020, unless reviewed and saved from repeal  
30 through reenactment by the Legislature.

31 Section 2. The Legislature finds that it is a public  
32 necessity that criminal or civil intelligence or investigative  
33 information, or any other information, held by the Department of  
34 Agriculture and Consumer Services as part of a joint or  
35 multiagency examination or investigation with another state or  
36 federal regulatory, administrative, or criminal justice agency  
37 be made confidential and exempt from s. 119.07(1), Florida  
38 Statutes, and s. 24(a), Art. I of the State Constitution.  
39 Without the exemption, the department will be unable to obtain





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40 information that could assist it in pursuing violations of law  
41 under its jurisdiction. With this exemption, the department  
42 should increase efficiency of investigations by saving time on  
43 developing investigative leads, witness data, and victim data.  
44 Furthermore, the exemption is necessary to enable the department  
45 to participate in joint or multiagency investigations and  
46 examinations. Without the exemption, the department would  
47 continue to be excluded from information due to the inability to  
48 maintain investigative confidentiality. Without the sharing and  
49 coordination of information, governmental agencies may be  
50 required to conduct duplicative independent investigations or  
51 examinations in order to meet their regulatory responsibilities.  
52 With this exemption, the department will strengthen  
53 relationships with other local, state, and federal agencies,  
54 allowing them to become more efficient by sharing critical  
55 investigative data.

56 Section 3. This act shall take effect upon becoming a law  
57 if SB 1444 or similar legislation is adopted in the same  
58 legislative session or an extension thereof and becomes law.

59  
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete everything before the enacting clause  
63 and insert:

64 A bill to be entitled  
65 An act relating to public records; creating s.  
66 570.077, F.S.; providing an exemption from public  
67 records requirements for criminal or civil  
68 intelligence or investigative information, or any



752452

69 other information, held by the Department of  
70 Agriculture and Consumer Services as part of an  
71 investigation with another state or federal  
72 regulatory, administrative, or criminal justice  
73 agency; providing exceptions to the public records  
74 exemption; providing applicability; providing for  
75 future legislative review and repeal of the exemption  
76 under the Open Government Sunset Review Act; providing  
77 a statement of public necessity; providing a  
78 contingent effective date.



228664

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/23/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 23 - 37  
and insert:

(1) The following information held by the Department of  
Agriculture and Consumer Services before, on, or after July 1,  
2015, is confidential and exempt from s. 119.07(1) and s. 24(a),  
Art. I of the State Constitution: criminal or civil  
intelligence, investigative information, or any other  
information that is received or developed by the department as



228664

11 part of a joint or multiagency examination or investigation with  
12 another state or federal regulatory, administrative, or criminal  
13 justice agency and is confidential or exempt pursuant to the  
14 laws of the other state or federal law. The department may  
15 obtain and use the information in accordance with the conditions  
16 imposed by the joint or multiagency agreement.

17  
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete lines 4 - 11

21 and insert:

22 records requirements for information received or  
23 developed by the Department of Agriculture and  
24 Consumer Services as part of a joint or multiagency  
25 examination or investigation under certain  
26 circumstances;



977250

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/23/2015	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete line 81  
and insert:  
SB 1444 or similar legislation takes effect, if such legislation

By Senator Richter

23-01727-15

20151446\_\_

A bill to be entitled

An act relating to public records; creating s.

570.077, F.S.; providing an exemption from public

records requirements for information received by the

Department of Agriculture and Consumer Services from

another state or federal agency and which is otherwise

confidential or exempt pursuant to the laws of the

other state or federal law; providing an exemption

from public records requirements for information

received or developed by the department as part of an

investigation with another state or federal agency;

providing applicability; providing for future

legislative review and repeal; providing a statement

of public necessity; providing a contingent effective

date.

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

Section 1. Section 570.077, Florida Statutes, is created to read:

570.077 Confidentiality of intelligence and investigative information.—

(1) The following information held by the Department of Agriculture and Consumer Services before, on, or after July 1, 2015, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Criminal and civil intelligence, investigative information, and any other information received from another state or federal regulatory, administrative, or criminal justice

Page 1 of 3

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

23-01727-15

20151446\_\_

agency which is confidential or exempt pursuant to the laws of the other state or federal law.

(b) Information that is received or developed by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The department may obtain and use the information in accordance with the conditions imposed by the joint or multiagency agreement.

(2) Subsection (1) does not apply to information received or developed by the department which would otherwise be available for public inspection if the department had conducted an independent examination or investigation under Florida law.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that criminal and civil intelligence, investigative information, and any other information held by the Department of Agriculture and Consumer Services before, on, or after July 1, 2015, which is received from another state or federal regulatory, administrative, or criminal justice agency and which is confidential or exempt pursuant to the laws of the other state or federal law be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Without the exemption, the department will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. With this exemption, the department should increase efficiency of investigations by

Page 2 of 3

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

23-01727-15

20151446\_\_

59 saving time in developing investigative leads, witness data, and  
60 victim data.

61 (2) The Legislature finds that it is a public necessity  
62 that information held by the Department of Agriculture and  
63 Consumer Services which is received or developed by the  
64 department as part of a joint or multiagency examination or  
65 investigation with another state or federal regulatory,  
66 administrative, or criminal justice agency be made confidential  
67 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
68 Article I of the State Constitution. The exemption is necessary  
69 to enable the department to participate in joint or multiagency  
70 investigations and examinations. Without the exemption, the  
71 department would continue to be excluded from information due to  
72 the inability to maintain investigative confidentiality. Without  
73 the sharing and coordination of information, governmental  
74 agencies may be required to conduct duplicative independent  
75 investigations or examinations in order to meet their regulatory  
76 responsibilities. With this exemption, the department will  
77 strengthen relationships with other local, state, and federal  
78 agencies, allowing them to become more efficient by sharing  
79 critical intelligence and investigative data.

80 Section 3. This act shall take effect on the same date that  
81 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
82 is adopted in the same legislative session or an extension  
83 thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Jeremy Ring, Chair  
Governmental Oversight and Accountability

Joe McVaney, Staff Director  
Allison Rudd, Committee Administrative Assistant

**Subject:** Committee Agenda Request

**Date:** March 17, 2015

---

Dear Chair Hays,

I would like to respectfully request that **Senate Bill #1446**, relating to Public Records/Department of Agriculture and Consumer Services, be placed on the Governmental Oversight and Accountability Committee Agenda at your earliest possible convenience.

Any questions regarding this legislation, please do not hesitate to contact me or my staff.

A handwritten signature in blue ink, appearing to read "Garrett Richter", written over a horizontal line.

Senator Garrett Richter  
Florida Senate, District 23





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Banking and Insurance, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Regulated Industries  
Rules

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

March 19, 2015

The Honorable Jeremy Ring, Chair  
Committee on Governmental Oversight and Accountability  
525 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Ring:

Senate Bill 1446 relating to Public Records/Department of Agriculture and Consumer Services is scheduled to be heard in the Committee on Governmental Oversight and Accountability this upcoming Monday, March 23<sup>rd</sup>. Due to conflicts in my committee schedule, I will be sending my Legislative Assistant, Michael Nacheff, as a representative to present the bill for your committee's consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

23 March 2015  
Meeting Date

SB 1446  
Bill Number (if applicable)

Topic SB 1446

Amendment Barcode (if applicable)

Name Lester Abberger

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

Address Post Box 1168  
Street

Phone 850/222 6333

Tallahassee FL 32302  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Philanthropic Network ; Florida Nonprofit Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

This form is not to be used for the purpose of recording the names of persons who do not appear at the meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/15  
Meeting Date

SB1446  
Bill Number (if applicable)

Topic Public Records Exemption/FIDACS

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 612-7700

Tallahassee FL 32319  
City State Zip

Email ~~JREES87@gmail.com~~  
Jonathan.Rees@freshfranklin.com

Speaking:  For  Against  Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

BILL: CS/SB 7040

INTRODUCER: Governmental Oversight and Accountability Committee and Transportation Committee

SUBJECT: Public Records/Electronic Mail Addresses/Department of Highway Safety and Motor Vehicles

DATE: March 24, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Jones</u>	<u>Eichin</u>		<b>TR Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7040 creates a new exemption from the public records inspection and access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for certain customer e-mail addresses held by the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill creates an exemption for e-mail addresses collected by the DHSMV for conducting driver license and motor vehicle record transactions.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

**II. Present Situation:**

**Public Records**

The Florida Constitution provides that the public has the right to access government records. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their

behalf.<sup>1</sup> In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act<sup>2</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>3</sup>

The Legislature may create an exemption to public records requirements.<sup>4</sup> An exemption must specifically state the public necessity justifying the exemption<sup>5</sup> and must be tailored to accomplish the stated purpose of the law.<sup>6</sup>

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

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records exemptions.<sup>7</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>8</sup>

The OGSR provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>9</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>10</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>11</sup> or

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> Chapter 119, F.S.

<sup>3</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>4</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>5</sup> FLA. CONST., art. I, s. 24(c).

<sup>6</sup> FLA. CONST., art. I, s. 24(c).

<sup>7</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>8</sup> Section 119.15(3), F.S.

<sup>9</sup> Section 119.15(6)(b), F.S.

<sup>10</sup> Section 119.15(6)(b)1., F.S.

<sup>11</sup> Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.<sup>12</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's public policy favoring open government and that the purpose of the exemption cannot be accomplished without the exemption.<sup>13</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>14</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>15</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>16</sup>

### **Public Records Status of E-mail Addresses and Agency Website Notice**

Under Florida law, e-mail addresses are public records.<sup>17</sup> Agency<sup>18</sup> websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send e-mail to the agency if they do not want their e-mail address released in response to a public records request.<sup>19</sup>

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<sup>12</sup> Section 119.15(6)(b)3., F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

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

<sup>16</sup> Section 119.15(7), F.S.

<sup>17</sup> Section 119.011(12), F.S., defines "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." See Attorney General Opinion 96-34, May 15, 1996.

<sup>18</sup> Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>19</sup> Section 668.6076, F.S.

## DHSMV

The DHSMV is the custodian of motor vehicle records<sup>20</sup> containing personal information about drivers and motor vehicle owners. Florida's motor vehicle records contain personal information such as a driver's social security number, driver license number, name, address, telephone number, and medical or disability information. Additionally, the DHSMV is authorized to collect e-mail addresses from customers and use e-mail for notification when conducting certain driver license and motor vehicle transactions.<sup>21</sup>

### Driver's Privacy Protection Act

Congress enacted the federal Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA prohibits the release and use of certain personal information from State motor vehicle records, and provides permissible uses and authorized disclosures of such information.<sup>22</sup> The DPPA defines "personal information" as information that identifies an individual, including the individual's:

- Photograph;
- Social security number;
- Driver identification number;
- Name;
- Address;
- Telephone number; and
- Medical or disability information.<sup>23</sup>

The DPPA also defines "highly restricted personal information" as:

- An individual's photograph or image
- Social security number
- Medical or disability information.<sup>24</sup>

Section 119.0712(2), F.S., provides that "personal information," including "highly restricted personal information," contained in a motor vehicle record, as defined by the DPPA, is confidential. This "personal information" may be released only as authorized by the DPPA. Furthermore, emergency contact information, including emergency contact e-mail addresses, contained in a motor vehicle record is confidential and exempt from the state's public records laws.<sup>25</sup> Without the express consent to whom such emergency contact information applies, the information may be released only to law enforcement agencies to contact those listed in the event of an emergency.<sup>26</sup>

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<sup>20</sup> Section 119.0712(2)(a), defines the term "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles."

<sup>21</sup> See ss. 319.40(3), 320.95(2), and 322.08(8), F.S.

<sup>22</sup> 18 U.S.C. s. 2721.

<sup>23</sup> 18 U.S.C. s. 2725(3).

<sup>24</sup> 18 U.S.C. s. 2725(4).

<sup>25</sup> Section 119.0712(2)(c), F.S.

<sup>26</sup> *Id.*

### **E-mail Addresses and Crimes**

The DHSMV was the subject of an e-mail phishing incident in which fraudsters used the Department's name and e-mail address, DoNotReply@flhsmv.gov, to send e-mails containing transactional receipts to the public. The e-mails directed the recipient to visit a third party website, which may have contained computer programs designed to harm the user.<sup>27</sup>

The Better Business Bureau posted an alert on its website, as well, warning individuals of e-mail phishing scams. They specifically address e-mails containing confirmation messages for recent driver license and vehicle registration renewals appearing to come from the DHSMV.<sup>28</sup> The e-mail includes a link directing the individual to a third-party website meant to download malware, which may be used to scan a computer for personal information that could be used for identity theft.

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

The bill makes customer e-mail addresses collected by the DHSMV exempt from the state's public records laws if the e-mail addresses are collected by the DHSMV specifically for:

- Sending a notification regarding motor vehicle titles, pursuant to s. 319.40(3), F.S.;
- Providing a renewal notice for a motor vehicle license or registration, pursuant to 320.95(2), F.S.; and
- Providing a renewal notice for a driver license or identification card, pursuant to 322.08(8), F.S.

The bill includes a retroactivity clause, therefore e-mail addresses which DHSMV previously collected for the aforementioned purposes will also be made exempt from public disclosure. The bill does not exempt e-mail addresses collected or held by the DHSMV for any purpose other than the ones enumerated above.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity states the Legislature finds e-mail addresses are unique to an individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams and invasive contacts. The public necessity statement provides that the exemption helps protect customers from this increased risk and outweighs the state's public policy favoring open government.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

The bill takes effect on July 1, 2015.

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<sup>27</sup> Department of Highway Safety and Motor Vehicles, *Fraudsters Use Agency's Name and Email Address for Phishing Expedition- Highway safety agency warns of email spam*, Press Release, Feb. 7, 2013, available at <http://www.flhsmv.gov/news/pdfs/PR020713a.pdf> (Last visited on March 1, 2015).

<sup>28</sup> Better Business Bureau, *Phishing Email Poses as Florida DMV*, Feb. 22, 2013, <http://www.bbb.org/blog/2013/02/phishing-email-poses-as-florida-dmv/> (Last visited March 1, 2015).



**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for customer e-mail addresses collected by the DHSMV; thus, it requires a two-thirds vote for final passage.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for customer e-mail addresses collected by the DHSMV; thus, it includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of DHSMV customers when those e-mail addresses are collected for the purposes named in the bill. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill provides greater consumer protection of DHSMV customer's e-mail addresses.

**C. Government Sector Impact:**

The bill may have a minimal fiscal impact on the DHSMV due to costs associated with training staff to comply with the new public records exemption, and redacting information prior to releasing a record.

To the extent this exemption encourages customers to choose to conduct driver license and motor vehicle record transactions via e-mail, the DHSMV will reduce the amount of money spent on postage.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0712 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on March 23, 2015:**

- The CS includes a clause providing for retroactive application of the exemption.
- The CS removes the term “electronic mail” and replaces it with “e-mail.”

**B. Amendments:**

None.



407984

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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	.	

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

**Senate Amendment (with title amendment)**

Delete lines 19 - 49  
and insert:

(c) E-mail addresses collected by the Department of Highway  
Safety and Motor Vehicles pursuant to s. 319.40(3), s.  
320.95(2), or s. 322.08(8) are exempt from s. 119.07(1) and s.  
24(a), Art. I of the State Constitution. This exemption applies  
retroactively. This paragraph is subject to the Open Government  
Sunset Review Act in accordance with s. 119.15 and shall stand



407984

11 repealed on October 2, 2020, unless reviewed and saved from  
12 repeal through reenactment by the Legislature.

13 Section 2. The Legislature finds that it is a public  
14 necessity that customers' e-mail addresses collected and held by  
15 the Department of Highway Safety and Motor Vehicles for the  
16 purpose of conducting motor vehicle record and driver license  
17 transactions be made exempt from s. 119.07(1), Florida Statutes,  
18 and s. 24(a), Article I of the State Constitution. The federal  
19 Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et  
20 seq., as enacted and last amended in 2000, does not include e-  
21 mail addresses among the types of personal information protected  
22 from disclosure. Customer use of e-mail addresses in conducting  
23 motor vehicle and driver license record transactions  
24 electronically with the department has significantly increased  
25 since 1994 and 2000. Under current law, the e-mail addresses  
26 collected by the department are public records and can be  
27 obtained by anyone for any purpose. However, these e-mail  
28 addresses are unique to each individual and, when combined with  
29 other personal identifying information, can be used for identity  
30 theft, consumer scams, unwanted solicitations, or other invasive  
31 contacts. The public availability of personal e-mail addresses  
32 puts department customers at increased risk of these problems.  
33 This risk may be significantly limited by permitting the  
34 department to keep customer e-mail addresses confidential. The  
35 Legislature finds that the risks to consumers outweigh the  
36 state's public policy favoring open government.

37  
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:



407984

40           Delete line 4  
41 and insert:  
42           records requirements for e-mail addresses

By the Committee on Transportation

596-01957-15

20157040\_\_

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing an exemption from public records requirements for electronic mail addresses collected by the Department of Highway Safety and Motor Vehicles; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (2) of section 119.0712, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(c) Electronic mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to s. 319.40(3), s. 320.95(2), or s. 322.08(8) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that customers' electronic mail addresses collected and held by the Department of Highway Safety and Motor Vehicles

Page 1 of 2

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

596-01957-15

20157040\_\_

for the purpose of conducting motor vehicle record and driver license transactions be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., did not include electronic mail addresses among the types of personal information protected from disclosure when enacted. Customer use of electronic mail addresses in conducting motor vehicle and driver license record transactions electronically with the department has significantly increased since 1994. Under current law, the electronic mail addresses collected by the department are public records and can be obtained by anyone for any purpose. However, such electronic mail addresses are unique to the individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contacts. The public availability of personal electronic mail addresses puts department customers at increased risk of these activities. This risk may be significantly limited by permitting the department to keep customer electronic mail addresses confidential.

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

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Jeremy Ring, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** March 12, 2015

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I respectfully request that **Senate Bill #7040**, relating to **Public Records/Electronic Mail Addresses/Department of Highway Safety and Motor Vehicles**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 22

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

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

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

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BILL: CS/SB 1304

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Latvala

SUBJECT: Inspectors General

DATE: March 24, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Fav/CS</b>
2.			AGG	
3.			FP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1304 amends s. 14.32, F.S., to authorize the Chief Inspector General or designee to hire or retain legal counsel and issue and enforce subpoenas under certain circumstances. The bill amends s. 20.055, F.S., to require the State Board of Administration and the Office of Early Learning to appoint an inspector general and to mandate additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general. The bill prohibits an inspector general and employees of inspector general from holding elective office and provides additional restrictions for an inspector general and their staff for specified political activities.

Also, the bill requires that records must be accessible to agency inspectors general during an audit or investigation. The bill requires specified personnel to cooperate with requests of agency inspectors general during investigations, audits, inspections, reviews and hearings.

Additionally, the bill requires certain language be included in state contracts, bids, and proposals.

The bill provides an effective date July 1, 2015.



## II. Present Situation:

### Chief Inspector General

Section 14.32, F.S., creates in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.<sup>1</sup> The Chief Inspector General is appointed by and serves at the pleasure of the Governor,<sup>2</sup> and serves as the inspector general for the Executive Office of the Governor.<sup>3</sup> The Chief Inspector General is required to:<sup>4</sup>

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of duties.
- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships,<sup>5</sup> including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, requesting records, monitoring contract compliance, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

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<sup>1</sup> Section 14.32(1), F.S.

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

<sup>3</sup> Section 14.32(4), F.S.

<sup>4</sup> Section 14.32(2), F.S.

<sup>5</sup> Section 14.32(3), F.S.

## Agency Inspectors General

### *Duties*

Section 20.055, F.S., requires that each state agency<sup>6</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency.<sup>7</sup> Each office is responsible for the following:<sup>8</sup>

- Advising in the development of performance measures, standards, and procedures for evaluation of state agency programs.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Reviewing the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency.
- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Keeping the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.
- Ensuring effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.
- Maintaining a balance among audit, investigative, and other accountability activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

### *Appointment*

For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general is appointed by the agency head.<sup>9</sup> For agencies under the jurisdiction of the Governor, the inspector general is be appointed by the Chief Inspector General.<sup>10</sup> The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to

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<sup>6</sup> Section 20.055(1)(d), F.S., defines the term “state agency” as “each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, and the state courts system.”

<sup>7</sup> Section 20.055(2), F.S.

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

<sup>9</sup> Section 20.055(3)(a), F.S.

<sup>10</sup> *Id.*

hire the inspector general at least seven days prior to an offer of employment.<sup>11</sup> Inspectors general shall be appointed without regard to political affiliation.<sup>12</sup>

### ***Removal***

Section 20.055(3)(c), F.S., governs removal of inspectors general. Inspectors general may be removed by the agency head for agencies under the jurisdiction of the Cabinet or the Governor and Cabinet. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties under this section. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove the inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.

### ***Qualifications***

To ensure that state agency audits are performed in accordance with applicable auditing standards, s. 20.055(4), F.S., provides that the inspector general or the director of auditing within the inspector general's office shall possess the following qualifications:

- (a) A bachelor's degree from an accredited college or university with a major in accounting or business with a minimum of five accounting courses, and five years experience as an internal auditor, independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or
- (b) A master's degree in accounting, business administration, or public administration from an accredited college or university and four years of experience as required in paragraph (a); or
- (c) A certified public accountant license issued pursuant to chapter 473 or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination and four years of experience as required in paragraph (a).

### ***Elected Office/Political Office Restrictions***

There are no current restrictions on inspectors general or office of inspector general staff regarding holding elective office, holding office in a political party or political committee, participating in a political campaign of any candidate for public office, making campaign contributions, or making campaign endorsements, while serving in the office of inspector general.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### ***Subpoenas***

The Chief Inspector General and agency inspectors general do not currently have the authority to issue subpoenas.

### ***Internal Audits***

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.<sup>13</sup> The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.<sup>14</sup> The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.<sup>15</sup>

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards.<sup>16</sup> All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.<sup>17</sup>

### ***More Duties***

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments.<sup>18</sup> The plan, where appropriate, should include post-audit samplings of payments and accounts.<sup>19</sup> The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors.<sup>20</sup> For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General.<sup>21</sup> The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.<sup>22</sup>

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:<sup>23</sup>

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<sup>13</sup> Section 20.055(5), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 20.055(5)(a), F.S.

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

<sup>18</sup> Section 20.055(5)(i), F.S.

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Section 20.055(6), F.S.

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.<sup>24</sup>
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.<sup>25</sup>
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.<sup>26</sup>
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information.<sup>27</sup>
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.<sup>28</sup>
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.<sup>29</sup>

Each inspector general must submit a yearly report on its activities to the agency head,<sup>30</sup> and provide any written complaints about the operations of the inspector general.<sup>31</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 14.32, F.S., to authorize the Chief Inspector General or his or her designee to hire or retain legal counsel and to issue and serve subpoenas to compel attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

For noncompliance with issuance of subpoena or subpoena duces tecum, the Chief Inspector General is authorized to petition the circuit court of county where the person has their residence or principal place of business to obtain an order requiring the person to appear and testify or produce the requested documents.

The Chief Inspector General is also authorized to require a person to file a statement in writing, under oath or otherwise, as to facts and circumstances to be audited, examined or investigated.

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<sup>24</sup> Section 20.055(6)(a), F.S.

<sup>25</sup> Section 20.055(6)(b), F.S.

<sup>26</sup> Section 20.055(6)(c), F.S.

<sup>27</sup> Section 20.055(6)(d), F.S.

<sup>28</sup> Section 20.055(6)(e), F.S.

<sup>29</sup> Section 20.055(6)(f), F.S.

<sup>30</sup> Section 20.055(7), F.S.

<sup>31</sup> Section 20.055(8), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

**Section 2** amends s. 20.055, F.S., to revise definitions of the terms “agency head” and “state agency.” The definition of “agency head” is expanded to include the executive directors of the State Board of Administration (SBA) and Office of Early Learning (OEL). The definition of “state agency” is expanded to include SBA and OEL. The bill requires an agency head, or for agencies under the jurisdiction of the Governor, the Chief Inspector General, to conduct a national search for a new inspector general within 60 days after a vacancy or anticipated vacancy in the position of inspector general and to set the salary of the inspector general. The bill allows an interim inspector general to be appointed from other office of inspector general management personnel until a successor is appointed.

The Department of Children and Families noted the following concerns regarding appointment of an interim inspector general:<sup>32</sup>

It is unclear as to whether the interim inspector general may be utilized from personnel within another agency’s office of inspector general. If an interim inspector general may only be selected from the agency experiencing the vacancy, small inspector general offices may experience a hardship in making an interim appointment.

The Department of Financial Services (DFS) noted the following concerns regarding the national search requirements:<sup>33</sup>

Requiring a search, especially a national search may slow down the hiring process. This may cause . . . issues for those Office of Inspector Generals who are relatively small. Presently there are 11 OIG’s who have three or less positions including the IG. Four of the 11 OIG’s are singularly staffed with only the IG and no other professional employees.

DFS noted the following concerns regarding the appointment of interim inspector general:<sup>34</sup>

Presently there are 11 OIG’s who are staffed with three or less positions. The only management position in these offices is the IG. This legislation would effectively leave the IG position vacant for extended periods of time pending a national search.

The bill outlines additional criteria that candidates must meet to be deemed eligible to fill a position as an inspector general. The bill prohibits an elected official from being appointed as inspector general within five years after the end of the individual’s term of service; however, his restriction does not prohibit the reappointment of a current inspector general.

The bill requires that the inspector general’s initial appointment is for a term of three years, and the inspector general’s term may be renewed for subsequent three-year terms. An inspector general may be removed for cause by the agency head.

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<sup>32</sup> Department of Children and Families legislative bill analysis for related bill, HB 371, dated Jan. 30, 2015, that contains similar language on appointment of interim inspector general. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

<sup>33</sup> DFS legislative bill analysis for related bill, HB 371, dated Feb. 18, 2015, that contains similar language on national search requirements and appointment of interim inspector general. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

<sup>34</sup> *Id.*

The bill clarifies that for state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head for administrative purposes.

### ***Qualifications***

This bill requires the following qualifications, certifications, training, experience, education and other criteria for inspectors general:

- An inspector general possess at appointment or obtain within the first year after appointment a certification from the Association of Inspectors General as a certified inspector general.
- An inspector general shall have at least one other related professional certification, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified governmental financial manager, certified fraud examiner, certified financial crimes investigator, or be a licensed attorney.
- The inspector general shall have experience managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations.
- The inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field.
- Inspector general is subject to level 2 background screening.
- A candidate for inspector general shall have a four-year degree from an accredited institution of higher learning or have at least five years of experience in at least one of the following areas:
  - Inspector general.
  - Local, state, or federal law enforcement officer.
  - Local, state or federal judge.
  - Experience in the administration and management of complex audits and investigations.
  - Senior-level auditor or comptroller.
  - Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
  - An advanced degree in law, accounting, public administration, or other relevant field may substitute for one year of required experience.

The bill appears to create statutory requirements for the appointment of agency inspectors general. The bill does not provide any time frames or procedures for challenging an appointees qualifications. If it is determined that an inspector general does not meet these new statutory requirements for appointment, it is unclear of the impact on the validity of audits and investigations overseen by that inspector general.

### ***Political Office/Party Restrictions***

The bill prohibits an inspector general or employee of an office of inspector general from holding office, or being a candidate for an elective office while serving as an inspector general or an employee of an office of inspector general. The bill also prohibits the inspector general and

employees in the office of inspector general from holding office in a political party or political committee while employed in the office of inspector general.

***Access to Agency Records***

The bill requires the inspector general and staff to have access to any records, data, and other of the state agency that the inspector general deems necessary to carry out his or her duties.

The inspector general shall have access to a building or facility that is owned, operated, or leased by a department, agency, board, or commission, or a property held in trust to the state.

***Duty to Cooperate***

The bill requires every state officer, employee, agency, special district, board, commission, contractor, subcontractor, licensee, and applicant for certification of eligibility for a contract or program, to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.

***Required Statement for Contract/Bid Proposals***

The bill requires that each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will abide by the duty to cooperate.

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

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.



C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The bill (lines 265-269) requires that each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will abide by this section. This provision may be more appropriately codified with the state procurement statutes.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32 and 20.055.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

**CS by Governmental Oversight and Accountability on March 23, 2015:**

The CS amends definitions of the terms “agency head” and “state agency” contained in s. 20.55(1)(a) and (d), F.S. This change requires the State Board of Administration and the Office of Early Learning to appoint an inspector general.

The initial term of appointment for an inspector general is three years, and subsequent three year terms may be renewed at discretion of agency head. An inspector general may be removed from office for cause by the agency head.

Provides that the inspector general is under the general supervision of the agency head for administrative purposes.

In regards to qualifications, the inspector general:

- Is subject to level 2 background screening;
- Shall have at least one other related professional certification;
- May substitute an advanced degree in law, accounting, public administration, or another relevant field for one year of required experience.

Experience as a local judge is added to the experience category of state and federal court judge.

For related certifications, the area of financial crimes investigator is added.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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	.	

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

**Senate Amendment (with title amendment)**

Delete lines 27 - 353

and insert:

(a) Hire or retain legal counsel.

(b) Issue and serve subpoenas and subpoenas duces tecum to  
compel the attendance of witnesses and the production of  
documents, reports, answers, records, accounts, and other data  
in any medium.

(c) Require or allow a person to file a statement in



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11 writing, under oath or otherwise, as to all the facts and  
12 circumstances concerning the matter to be audited, examined, or  
13 investigated.

14  
15 In the event of noncompliance with a subpoena issued pursuant to  
16 this subsection, the Chief Inspector General may petition the  
17 circuit court of the county in which the person subpoenaed  
18 resides or has his or her principal place of business for an  
19 order requiring the person subpoenaed to appear and testify and  
20 to produce documents, reports, answers, records, accounts, or  
21 other data as specified in the subpoena.

22 Section 2. Present subsections (1) through (5) of section  
23 20.055, Florida Statutes, are amended, new subsections (5) and  
24 (6) are added to that section, and present subsections (6)  
25 through (9) are redesignated as subsections (8) through (11),  
26 respectively, to read:

27 20.055 Agency inspectors general.—

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

29 (a) "Agency head" means the Governor, a Cabinet officer, or  
30 a secretary or executive director as those terms are defined in  
31 s. 20.03, the chair of the Public Service Commission, the  
32 Director of the Office of Insurance Regulation of the Financial  
33 Services Commission, the Director of the Office of Financial  
34 Regulation of the Financial Services Commission, the board of  
35 directors of the Florida Housing Finance Corporation, the  
36 Executive Director of the State Board of Administration, the  
37 Executive Director of the Office of Early Learning, and the  
38 Chief Justice of the State Supreme Court.

39 (b) "Entities contracting with the state" means for-profit



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40 and not-for-profit organizations or businesses that have a legal  
41 existence, such as corporations or partnerships, as opposed to  
42 natural persons, which have entered into a relationship with a  
43 state agency to provide for consideration certain goods or  
44 services to the state agency or on behalf of the state agency.  
45 The relationship may be evidenced by payment by warrant or  
46 purchasing card, contract, purchase order, provider agreement,  
47 or other such mutually agreed upon relationship. The term does  
48 not apply to entities that are the subject of audits or  
49 investigations conducted pursuant to ss. 112.3187-112.31895 or  
50 s. 409.913 or which are otherwise confidential and exempt under  
51 s. 119.07.

52 (c) "Individuals substantially affected" means natural  
53 persons who have established a real and sufficiently immediate  
54 injury in fact due to the findings, conclusions, or  
55 recommendations of a final report of a state agency inspector  
56 general, who are the subject of the audit or investigation, and  
57 who do not have or are not currently afforded an existing right  
58 to an independent review process. The term does not apply to  
59 employees of the state, including career service, probationary,  
60 other personal service, Selected Exempt Service, and Senior  
61 Management Service employees; former employees of the state if  
62 the final report of the state agency inspector general relates  
63 to matters arising during a former employee's term of state  
64 employment; or persons who are the subject of audits or  
65 investigations conducted pursuant to ss. 112.3187-112.31895 or  
66 s. 409.913 or which are otherwise confidential and exempt under  
67 s. 119.07.

68 (d) "State agency" means each department created pursuant



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69 to this chapter and the Executive Office of the Governor, the  
70 Department of Military Affairs, the Fish and Wildlife  
71 Conservation Commission, the Office of Insurance Regulation of  
72 the Financial Services Commission, the Office of Financial  
73 Regulation of the Financial Services Commission, the Public  
74 Service Commission, the Board of Governors of the State  
75 University System, the Florida Housing Finance Corporation, the  
76 Agency for State Technology, the State Board of Administration,  
77 the Office of Early Learning, and the state courts system.

78 (2) An ~~The~~ office of Inspector General is established in  
79 each state agency to provide a central point for coordination of  
80 and responsibility for activities that promote accountability,  
81 integrity, and efficiency in government. It is the duty and  
82 responsibility of each inspector general, with respect to the  
83 state agency in which the office is established, to:

84 (a) Advise in the development of performance measures,  
85 standards, and procedures for the evaluation of state agency  
86 programs.

87 (b) Assess the reliability and validity of the information  
88 provided by the state agency on performance measures and  
89 standards, and make recommendations for improvement, if  
90 necessary, before submission of such information pursuant to s.  
91 216.1827.

92 (c) Review the actions taken by the state agency to improve  
93 program performance and meet program standards and make  
94 recommendations for improvement, if necessary.

95 (d) Provide direction for, supervise, and coordinate  
96 audits, investigations, and management reviews relating to the  
97 programs and operations of the state agency, except that when



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98 the inspector general does not possess the qualifications  
99 specified in subsection (4), the director of auditing shall  
100 conduct such audits.

101 (e) Conduct, supervise, or coordinate other activities  
102 carried out or financed by that state agency for the purpose of  
103 promoting economy and efficiency in the administration of, or  
104 preventing and detecting fraud and abuse in, its programs and  
105 operations.

106 (f) Keep the agency head or, for state agencies under the  
107 jurisdiction of the Governor, the Chief Inspector General  
108 informed concerning fraud, abuses, and deficiencies relating to  
109 programs and operations administered or financed by the state  
110 agency, recommend corrective action concerning fraud, abuses,  
111 and deficiencies, and report on the progress made in  
112 implementing corrective action.

113 (g) Ensure effective coordination and cooperation between  
114 the Auditor General, federal auditors, and other governmental  
115 bodies with a view toward avoiding duplication.

116 (h) Review, as appropriate, rules relating to the programs  
117 and operations of such state agency and make recommendations  
118 concerning their impact.

119 (i) Ensure that an appropriate balance is maintained  
120 between audit, investigative, and other accountability  
121 activities.

122 (j) Comply with the General Principles and Standards for  
123 Offices of Inspector General as published and revised by the  
124 Association of Inspectors General.

125 (3) (a) 1. For state agencies under the jurisdiction of the  
126 Cabinet or the Governor and Cabinet, the inspector general shall



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127 be appointed by the agency head. For state agencies under the  
128 jurisdiction of the Governor, the inspector general shall be  
129 appointed by the Chief Inspector General. The agency head or  
130 Chief Inspector General shall notify the Governor in writing of  
131 his or her intention to hire the inspector general at least 7  
132 days before an offer of employment. The inspector general shall  
133 be appointed without regard to political affiliation.

134 2. Within 60 days after a vacancy or anticipated vacancy in  
135 the position of inspector general, the agency head or, for  
136 agencies under the jurisdiction of the Governor, the Chief  
137 Inspector General, shall initiate a national search for an  
138 inspector general and shall set the salary of the inspector  
139 general. In the event of a vacancy in the position of inspector  
140 general, the agency head or, for agencies under the jurisdiction  
141 of the Governor, the Chief Inspector General, may appoint other  
142 office of inspector general management personnel as interim  
143 inspector general until such time as a successor inspector  
144 general is appointed.

145 3. A former or current elected official may not be  
146 appointed inspector general within 5 years after the end of such  
147 individual's period of service. This restriction does not  
148 prohibit the reappointment of a current inspector general.

149 4. Upon appointment as inspector general, an individual's  
150 initial term shall be 3 years. Subsequent 3-year terms may be  
151 renewed at the discretion of the agency head or, for agencies  
152 under the jurisdiction of the Governor, the Chief Inspector  
153 General. Notwithstanding this term of appointment, an inspector  
154 general may be removed from office for cause by the agency head  
155 or, for agencies under the jurisdiction of the Governor, the





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156 Chief Inspector General, as provided in paragraph (c).

157       (b) The inspector general shall report to and be under the  
158 general supervision of the agency head and is not subject to  
159 supervision by any other employee of the state agency in which  
160 the office is established. For state agencies under the  
161 jurisdiction of the Governor, the inspector general shall be  
162 under the general supervision of the agency head for  
163 administrative purposes, shall report to the Chief Inspector  
164 General, and may hire and remove staff within the office of the  
165 inspector general in consultation with the Chief Inspector  
166 General but independently of the agency.

167       (c) For state agencies under the jurisdiction of the  
168 Cabinet or the Governor and Cabinet, the inspector general may  
169 be removed from office by the agency head. For state agencies  
170 under the jurisdiction of the Governor, the inspector general  
171 may only be removed from office by the Chief Inspector General  
172 for cause, including concerns regarding performance,  
173 malfeasance, misfeasance, misconduct, or failure to carry out  
174 his or her duties under this section. The Chief Inspector  
175 General shall notify the Governor in writing of his or her  
176 intention to remove the inspector general at least 21 days  
177 before the removal. For state agencies under the jurisdiction of  
178 the Governor and Cabinet, the agency head shall notify the  
179 Governor and Cabinet in writing of his or her intention to  
180 remove the inspector general at least 21 days before the  
181 removal. If the inspector general disagrees with the removal,  
182 the inspector general may present objections in writing to the  
183 Governor within the 21-day period.

184       (d) The Governor, the Governor and Cabinet, the agency



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185 head, or agency staff may not prevent or prohibit the inspector  
186 general from initiating, carrying out, or completing any audit  
187 or investigation.

188 (4) (a) To ensure that state agency audits are performed in  
189 accordance with applicable auditing standards, the inspector  
190 general or the director of auditing within the inspector  
191 general's office shall possess the following qualifications:

192 1. ~~(a)~~ A bachelor's degree from an accredited college or  
193 university with a major in accounting, or with a major in  
194 business which includes five courses in accounting, and 5 years  
195 of experience as an internal auditor or independent postauditor,  
196 electronic data processing auditor, accountant, or any  
197 combination thereof. At a minimum, the experience must ~~shall at~~  
198 ~~a minimum~~ consist of audits of units of government or private  
199 business enterprises, operating for profit or not for profit; ~~or~~

200 2. ~~(b)~~ A master's degree in accounting, business  
201 administration, or public administration from an accredited  
202 college or university and 4 years of the professional experience  
203 ~~as~~ required under subparagraph 1. in paragraph (a); or

204 3. ~~(c)~~ A certified public accountant license issued pursuant  
205 to chapter 473 or a certified internal audit certificate issued  
206 by the Institute of Internal Auditors or earned by examination,  
207 and 4 years of the professional experience ~~as~~ required under  
208 subparagraph 1. in paragraph (a).

209 (b) For agencies under the jurisdiction of the Governor,  
210 the inspector general shall be selected on the basis of  
211 integrity, leadership capability, and experience in accounting,  
212 auditing, financial analysis, law, management analysis, program  
213 evaluation, public administration, investigation, criminal



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214 justice administration, or another closely related field. The  
215 inspector general is subject to level 2 background screening.  
216 The inspector general shall have a 4-year degree from an  
217 accredited institution of higher learning or at least 5 years of  
218 experience in at least one of the following areas:

- 219 1. Inspector general.
- 220 2. Supervisory experience in an office of inspector general  
221 or an investigative public agency similar to an office of  
222 inspector general.
- 223 3. Local, state, or federal law enforcement officer.
- 224 4. Local, state, or federal court judge.
- 225 5. Senior-level auditor or comptroller.
- 226 6. Experience in the administration and management of  
227 complex audits and investigations.
- 228 7. Experience managing programs for prevention,  
229 examination, detection, elimination of fraud, waste, abuse,  
230 mismanagement, malfeasance, or misconduct in government or  
231 organizations.
- 232 8. An advanced degree in law, accounting, public  
233 administration, or another relevant field may substitute for one  
234 year of required experience.

235 (c) The inspector general shall possess at appointment, or  
236 obtain within the first year after appointment, certification  
237 from the Association of Inspectors General as a certified  
238 inspector general. The inspector general shall have at least one  
239 other related professional certification, such as certified  
240 inspector general investigator, certified inspector general  
241 auditor, certified public accountant, certified internal  
242 auditor, certified governmental financial manager, certified



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243 fraud examiner, or certified financial crimes investigator, or  
244 be a licensed attorney.

245 (d) The inspector general may not hold, or be a candidate  
246 for, an elective office while inspector general, and a current  
247 officer or employee of an office of inspector general may not  
248 hold, or be a candidate for, an elective office. The inspector  
249 general may not hold office in a political party or political  
250 committee. An employee of an office of inspector general may not  
251 hold office in a political party or political committee while  
252 employed in the office of inspector general.

253 (5) The inspector general and his or her staff shall have  
254 access to any records, data, and other information of the state  
255 agency which he or she deems necessary to carry out his or her  
256 duties. At all times, the inspector general shall have access to  
257 a building or facility that is owned, operated, or leased by a  
258 department, agency, board, or commission, or a property held in  
259 trust to the state.

260 (6) It is the duty of every state officer, employee,  
261 agency, special district, board, commission, contractor,  
262 subcontractor, licensee, and applicant for certification of  
263 eligibility for a contract or program, to cooperate with the  
264 inspector general in any investigation, audit, inspection,  
265 review, or hearing conducted pursuant to this section. Each  
266 contract, bid, proposal, and application or solicitation for a  
267 contract shall contain a statement that the corporation,  
268 partnership, or person understands and will comply with this  
269 subsection.

270 (7)~~(5)~~ In carrying out the auditing duties and  
271 responsibilities ~~specified in~~ ~~of~~ this ~~section~~ ~~act~~, each



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272 inspector general shall review and evaluate internal controls  
273 necessary to ensure the fiscal accountability of the state  
274 agency. The inspector general shall conduct financial,  
275 compliance, electronic data processing, and performance audits  
276 of the agency and prepare audit reports of his or her findings.  
277 The scope and assignment of the audits shall be determined by  
278 the inspector general; however, the agency head may at any time  
279 request the inspector general to perform an audit of a special  
280 program, function, or organizational unit. The performance of  
281 the audit shall be under the direction of the inspector general,  
282 except that if the inspector general does not possess the  
283 qualifications specified in subsection (4), the director of  
284 auditing shall perform the functions listed in this subsection.

285 (a) Such audits shall be conducted in accordance with the  
286 current International Standards for the Professional Practice of  
287 Internal Auditing as published by the Institute of Internal  
288 Auditors, Inc., or, where appropriate, in accordance with  
289 generally accepted governmental auditing standards. All audit  
290 reports issued by internal audit staff shall include a statement  
291 that the audit was conducted pursuant to the appropriate  
292 standards.

293 (b) Audit workpapers and reports shall be public records to  
294 the extent that they do not include information which has been  
295 made confidential and exempt from the provisions of s. 119.07(1)  
296 pursuant to law. However, when the inspector general or a member  
297 of the staff receives from an individual a complaint or  
298 information that falls within the definition provided in s.  
299 112.3187(5), the name or identity of the individual may not be  
300 disclosed to anyone else without the written consent of the



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301 individual, unless the inspector general determines that such  
302 disclosure is unavoidable during the course of the audit or  
303 investigation.

304 ~~(c) The inspector general and the staff shall have access~~  
305 ~~to any records, data, and other information of the state agency~~  
306 ~~he or she deems necessary to carry out his or her duties. The~~  
307 ~~inspector general may also request such information or~~  
308 ~~assistance as may be necessary from the state agency or from any~~  
309 ~~federal, state, or local government entity.~~

310 ~~(d)~~ At the conclusion of each audit, the inspector general  
311 shall submit preliminary findings and recommendations to the  
312 person responsible for supervision of the program function or  
313 operational unit who shall respond to any adverse findings  
314 within 20 working days after receipt of the preliminary  
315 findings. Such response and the inspector general's rebuttal to  
316 the response shall be included in the final audit report.

317 ~~(d)~~(e) At the conclusion of an audit in which the subject  
318 of the audit is a specific entity contracting with the state or  
319 an individual substantially affected, if the audit is not  
320 confidential or otherwise exempt from disclosure by law, the  
321 inspector general shall, consistent with s. 119.07(1), submit  
322 the findings to the entity contracting with the state or the  
323 individual substantially affected, who shall be advised in  
324 writing that they may submit a written response within 20  
325 working days after receipt of the findings. The response and the  
326 inspector general's rebuttal to the response, if any, must be  
327 included in the final audit report.

328 ~~(e)~~(f) The inspector general shall submit the final report  
329 to the agency head, the Auditor General, and, for state agencies



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330 under the jurisdiction of the Governor, the Chief Inspector  
331 General.

332 (f)~~(g)~~ The Auditor General, in connection with the  
333 independent postaudit of the same agency pursuant to s. 11.45,  
334 shall give appropriate consideration to internal audit reports  
335 and the resolution of findings therein. The Legislative Auditing  
336 Committee may inquire into the reasons or justifications for  
337 failure of the agency head to correct the deficiencies reported  
338 in internal audits that are also reported by the Auditor General  
339 and shall take appropriate action.

340 (g)~~(h)~~ The inspector general shall monitor the  
341 implementation of the state agency's response to any report on  
342 the state agency issued by the Auditor General or by the Office  
343 of Program Policy Analysis and Government Accountability. No  
344 later than 6 months after the Auditor General or the Office of  
345 Program Policy Analysis and Government Accountability publishes  
346 a report on the state agency, the inspector general shall  
347 provide a written response to the agency head or, for state  
348 agencies under the jurisdiction of the Governor, the Chief  
349 Inspector General on the status of corrective actions taken. The  
350 inspector general shall file a copy of such response with the  
351 Legislative Auditing Committee.

352 (h)~~(i)~~ The inspector general shall develop long-term and  
353

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

355 And the title is amended as follows:

356 Delete lines 4 - 17

357 and insert:

358 or his or her designee to retain legal counsel and



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359 issue and enforce subpoenas under certain  
360 circumstances; amending s. 20.055, F.S.; revising the  
361 definitions of the terms "agency head" and "state  
362 agency" to include the State Board of Administration  
363 and the Office of Early Learning of the Department of  
364 Education; prescribing additional hiring requirements,  
365 employment qualifications, and terms of employment for  
366 inspectors general and staff of the office of  
367 inspector general; specifying that an inspector  
368 general is entitled to access to specified buildings  
369 or facilities; establishing the duty of specified  
370 persons and entities with respect to cooperation with  
371 an inspector general's official duties; requiring  
372 contracts and other specified documents to contain a  
373 statement regarding compliance with an inspector  
374 general's official duties;



By Senator Latvala

20-00807-15

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A bill to be entitled

An act relating to inspectors general; amending s. 14.32, F.S.; authorizing the Chief Inspector General or his or her designee to issue and enforce subpoenas under certain circumstances; amending s. 20.055, F.S.; providing additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general and staff; specifying additional records and personnel that must be accessible to agency inspectors general during an audit or investigation; authorizing agency inspectors general and designated staff to administer oaths; requiring all personnel to comply with requests of agency inspectors general under penalty of loss of employment; specifying that disclosure of certain information to agency inspectors general does not constitute a waiver of attorney-client privilege; providing an effective date.

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

Section 1. Subsection (5) is added to section 14.32, Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(5) In exercising authority under this section, the Chief Inspector General or his or her designee may:

(a) Issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data

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in any medium.

(b) Require or authorize a person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

In the event of noncompliance with a subpoena issued pursuant to this subsection, the Chief Inspector General may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the person subpoenaed to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena.

Section 2. Subsections (3), (4), and (5) of section 20.055, Florida Statutes, are amended to read:

20.055 Agency inspectors general.—

(3) (a) 1. For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general shall be appointed by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general shall be appointed by the Chief Inspector General. The agency head or Chief Inspector General shall notify the Governor in writing of his or her intention to hire the inspector general at least 7 days before an offer of employment. The inspector general shall be appointed without regard to political affiliation.

2. Within 60 days after a vacancy or anticipated vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, shall initiate a national search for an

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59 inspector general and shall set the salary of the inspector  
 60 general. In the event of a vacancy in the position of inspector  
 61 general, the agency head or, for agencies under the jurisdiction  
 62 of the Governor, the Chief Inspector General, may appoint other  
 63 office of inspector general management personnel as interim  
 64 inspector general until such time that a successor inspector  
 65 general is appointed.

66 3. A former or current elected official may not be  
 67 appointed inspector general within 5 years after the end of such  
 68 individual's period of service. Notwithstanding this  
 69 restriction, employees of the office of inspector general who  
 70 have served in the office for 4 or more years may be considered  
 71 eligible for appointment to the position of inspector general.  
 72 This subparagraph does not prohibit the reappointment of a  
 73 current inspector general.

74 4. Upon appointment as inspector general, an individual's  
 75 initial term shall be 5 years. Subsequent 5-year terms may be  
 76 renewed at the discretion of the agency head or, for agencies  
 77 under the jurisdiction of the Governor, the Chief Inspector  
 78 General. Notwithstanding this term of appointment, an inspector  
 79 general may be removed from office at the discretion of the  
 80 agency head or, for agencies under the jurisdiction of the  
 81 Governor, the Chief Inspector General, as provided in paragraph  
 82 (c).

83 (b) The inspector general shall report to and be under the  
 84 general supervision of the agency head and is not subject to  
 85 supervision by any other employee of the state agency in which  
 86 the office is established. For state agencies under the  
 87 jurisdiction of the Governor, the inspector general shall be

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88 under the general supervision of the agency head, shall report  
 89 to the Chief Inspector General, and may hire and remove staff  
 90 within the office of the inspector general in consultation with  
 91 the Chief Inspector General but independently of the agency. An  
 92 office of inspector general may include, but not be limited to,  
 93 a division of investigations, a division of audit, or other  
 94 division as appropriate. The Chief Inspector General may hire or  
 95 retain legal counsel.

96 (c) For state agencies under the jurisdiction of the  
 97 Cabinet or the Governor and Cabinet, the inspector general may  
 98 be removed from office by the agency head. For state agencies  
 99 under the jurisdiction of the Governor, the inspector general  
 100 may only be removed from office by the Chief Inspector General  
 101 for cause, including concerns regarding performance,  
 102 malfeasance, misfeasance, misconduct, or failure to carry out  
 103 his or her duties under this section. The Chief Inspector  
 104 General shall notify the Governor in writing of his or her  
 105 intention to remove the inspector general at least 21 days  
 106 before the removal. For state agencies under the jurisdiction of  
 107 the Governor and Cabinet, the agency head shall notify the  
 108 Governor and Cabinet in writing of his or her intention to  
 109 remove the inspector general at least 21 days before the  
 110 removal. If the inspector general disagrees with the removal,  
 111 the inspector general may present objections in writing to the  
 112 Governor within the 21-day period.

113 (d) The Governor, the Governor and Cabinet, the agency  
 114 head, or agency staff may not prevent or prohibit the inspector  
 115 general from initiating, carrying out, or completing any audit  
 116 or investigation.

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117 (4) (a) To ensure that state agency audits are performed in  
 118 accordance with applicable auditing standards, the inspector  
 119 general or the director of auditing within the inspector  
 120 general's office shall possess the following qualifications:

121 1. ~~(a)~~ A bachelor's degree from an accredited college or  
 122 university with a major in accounting, or with a major in  
 123 business which includes five courses in accounting, and 5 years  
 124 of experience as an internal auditor or independent postauditor,  
 125 electronic data processing auditor, accountant, or any  
 126 combination thereof. The experience shall at a minimum consist  
 127 of audits of units of government or private business  
 128 enterprises, operating for profit or not for profit; ~~or~~

129 2. ~~(b)~~ A master's degree in accounting, business  
 130 administration, or public administration from an accredited  
 131 college or university and 4 years of experience as required in  
 132 subparagraph 1. paragraph (a); or

133 3. ~~(c)~~ A certified public accountant license issued pursuant  
 134 to chapter 473 or a certified internal audit certificate issued  
 135 by the Institute of Internal Auditors or earned by examination,  
 136 and 4 years of experience as required in paragraph (a).

137 4. The inspector general shall possess at appointment, or  
 138 seek within the first year after appointment, a certification  
 139 from the Association of Inspectors General as a certified  
 140 inspector general. A well-qualified inspector general shall have  
 141 two or more other professional certifications, such as certified  
 142 inspector general investigator, certified inspector general  
 143 auditor, certified public accountant, certified internal  
 144 auditor, certified governmental financial manager, or certified  
 145 fraud examiner, or be a licensed attorney.

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146 (b) The inspector general shall have special training and  
 147 experience in the administration and managing of programs for  
 148 prevention, examination, investigation, audit, detection,  
 149 elimination, and prosecution of fraud, corruption, waste,  
 150 mismanagement, or misconduct in the operation of government or  
 151 organizations. The inspector general shall be selected on the  
 152 basis of integrity, leadership capability, and demonstrated  
 153 ability in accounting, auditing, financial analysis, law,  
 154 management analysis, public administration, investigation,  
 155 criminal justice administration, or other closely related field.  
 156 In addition, the inspector general should demonstrate knowledge,  
 157 skills, abilities, and experience in conducting audits,  
 158 investigations, inspections, and performance reviews. A  
 159 qualified candidate for inspector general shall have a 4-year  
 160 degree from an accredited institution of higher learning or have  
 161 at least 5 years of experience in at least one of the following  
 162 professions:

163 1. Inspector general.

164 2. Local, state, or federal law enforcement officer.

165 3. Federal or state court judge.

166 4. Licensed attorney with expertise in the areas of audit  
 167 and investigation of fraud, mismanagement, waste, corruption,  
 168 and abuse of power.

169 5. Senior-level auditor or comptroller.

170 6. Supervisory experience in an office of inspector general  
 171 or an investigative public agency similar to an office of  
 172 inspector general.

173

174 For agencies under the jurisdiction of the Governor, the Chief

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175 Inspector General may consider other credentials,  
 176 certifications, education, and experience, as appropriate.  
 177 (c) In addition to the qualifications in paragraph (b), a  
 178 qualified candidate shall have:  
 179 1. Managed and completed complex investigations involving  
 180 allegations of fraud, waste, abuse, illegal acts, theft, public  
 181 corruption, deception and conspiracy;  
 182 2. Demonstrated the ability to effectively collaborate with  
 183 local, state, and federal law enforcement agencies and the  
 184 judiciary; or  
 185 3. An advanced degree in law, accounting, public  
 186 administration, or other relevant field.  
 187 (d) The inspector general may not hold, or be a candidate  
 188 for, an elective office while inspector general, and a current  
 189 officer or employee of an office of inspector general may not  
 190 hold, or be a candidate for, an elective office. The inspector  
 191 general may not hold office in a political party or political  
 192 committee, may not participate in a political campaign of any  
 193 candidate for elective office, and may not make a campaign  
 194 contribution or campaign endorsement. An employee of an office  
 195 of inspector general may not hold office in a political party or  
 196 political committee, participate in a political campaign of a  
 197 candidate for elective office, or make a campaign contribution  
 198 or campaign endorsement, while employed in the office of  
 199 inspector general.  
 200 (5) In carrying out the auditing duties and  
 201 responsibilities of this ~~section act~~, each inspector general  
 202 shall review and evaluate internal controls necessary to ensure  
 203 the fiscal accountability of the state agency. The inspector

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204 general shall conduct financial, compliance, electronic data  
 205 processing, and performance audits of the agency and prepare  
 206 audit reports of his or her findings. The scope and assignment  
 207 of the audits shall be determined by the inspector general;  
 208 however, the agency head may at any time request the inspector  
 209 general to perform an audit of a special program, function, or  
 210 organizational unit. The performance of the audit shall be under  
 211 the direction of the inspector general, except that if the  
 212 inspector general does not possess the qualifications specified  
 213 in subsection (4), the director of auditing shall perform the  
 214 functions listed in this subsection.  
 215 (a) Such audits shall be conducted in accordance with the  
 216 current International Standards for the Professional Practice of  
 217 Internal Auditing as published by the Institute of Internal  
 218 Auditors, Inc., or, where appropriate, in accordance with  
 219 generally accepted governmental auditing standards. All audit  
 220 reports issued by internal audit staff shall include a statement  
 221 that the audit was conducted pursuant to the appropriate  
 222 standards.  
 223 (b) Audit workpapers and reports shall be public records to  
 224 the extent that they do not include information which has been  
 225 made confidential and exempt from the provisions of s. 119.07(1)  
 226 pursuant to law. However, when the inspector general or a member  
 227 of the staff receives from an individual a complaint or  
 228 information that falls within the definition provided in s.  
 229 112.3187(5), the name or identity of the individual may not be  
 230 disclosed to anyone else without the written consent of the  
 231 individual, unless the inspector general determines that such  
 232 disclosure is unavoidable during the course of the audit or

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233 investigation.

234 (c) The inspector general and the staff shall have access  
 235 to all records, information, data, reports, plans, projections,  
 236 matters, contracts, memoranda, correspondence, audits, reviews,  
 237 papers, books, documents, computer hard drives, e-mails, instant  
 238 messages, recommendations, and any other material of the agency,  
 239 agency head, or of an individual, partnership, corporation, or  
 240 organization related to any financial or official function of  
 241 state government that the inspector general deems necessary to  
 242 facilitate an investigation, audit, inspection, or performance  
 243 review. The inspector general shall have access to all employees  
 244 of the agency. The inspector general shall, at all times, have  
 245 access to buildings or facilities that are owned, operated, or  
 246 leased by a department, agency, board, or commission, or  
 247 property held in trust to the state ~~to any records, data, and~~  
 248 ~~other information of the state agency he or she deems necessary~~  
 249 ~~to carry out his or her duties.~~ The inspector general may also  
 250 request such information or assistance as may be necessary from  
 251 the state agency or from any federal, state, or local government  
 252 entity.

253 (d)1. For purposes of an investigation, audit, inspection,  
 254 or performance review, the inspector general and staff  
 255 designated by the inspector general may administer oaths and  
 256 affirmations, compel witness attendance and testimony under  
 257 oath, take evidence, and require the production of any records  
 258 that the inspector general deems relevant or material to an  
 259 investigation, audit, inspection, or performance review.

260 2.a. In carrying out the provisions of this paragraph, the  
 261 inspector general shall have access to all records; reports;

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262 audits; reviews; papers; books; documents; computer hard drives;  
 263 e-mails; instant messages; recommendations; correspondence,  
 264 including information relative to the purchase of supplies and  
 265 services or anticipated purchase of supplies and services from  
 266 any contractor by an agency, board, or commission; and other  
 267 data and material that is maintained by or available to the  
 268 agency, board, or commission that in any way relates to the  
 269 programs and operations with respect to which the inspector  
 270 general has duties and responsibilities.

271 b. The inspector general may request information,  
 272 cooperation, and assistance from an agency, special district,  
 273 board, or commission. Each person in charge of an agency,  
 274 special district, board, or commission shall furnish the  
 275 inspector general with such information, cooperation, and  
 276 assistance upon receipt of such request.

277 c. The inspector general shall have direct and prompt  
 278 access to the head of any agency, special district, board, or  
 279 commission when necessary for any purpose pertaining to the  
 280 performance of his or her duties and responsibilities. The  
 281 inspector general may require the attendance and testimony under  
 282 oath of persons and the production of all records, reports,  
 283 audits, inspections, reviews, papers, books, documents, computer  
 284 hard drives, e-mails, instant messages, recommendations,  
 285 correspondence, and other data and material relevant to a matter  
 286 under audit, investigation, inspection, or performance review.  
 287 Such summons shall be served in the same manner as a summons for  
 288 the production of documents in civil cases issued on behalf of  
 289 the state. Failure to appear in response to a subpoena, answer a  
 290 question, or produce information requested, or to knowingly give

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291 false testimony during an investigation, audit, inspection, or  
 292 review shall be considered contempt of court and shall subject a  
 293 respondent to loss of employment with the agency, special  
 294 district, board, or commission.

295 d. Every state officer, employee, agency, special district,  
 296 board, commission, contractor, subcontractor, licensee, and  
 297 applicant for certification of eligibility for a contract or  
 298 program shall cooperate with the inspector general in any  
 299 investigation, audit, inspection, performance review, or hearing  
 300 conducted pursuant to this section. Each contract, bid,  
 301 proposal, and application or solicitation for a contract shall  
 302 contain a statement that the corporation, partnership, or person  
 303 understands and will abide by this section. An employee,  
 304 appointed officer, or elected official who violates this section  
 305 is subject to loss of employment.

306 e. Disclosure to an inspector general of communications  
 307 between an agency, special district, board, or commission and an  
 308 attorney representing the agency, special district, board, or  
 309 commission does not constitute a waiver of attorney-client  
 310 privilege.

311 (e)-(d) At the conclusion of each audit, the inspector  
 312 general shall submit preliminary findings and recommendations to  
 313 the person responsible for supervision of the program function  
 314 or operational unit who shall respond to any adverse findings  
 315 within 20 working days after receipt of the preliminary  
 316 findings. Such response and the inspector general's rebuttal to  
 317 the response shall be included in the final audit report.

318 (f)-(e) At the conclusion of an audit in which the subject  
 319 of the audit is a specific entity contracting with the state or

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320 an individual substantially affected, if the audit is not  
 321 confidential or otherwise exempt from disclosure by law, the  
 322 inspector general shall, consistent with s. 119.07(1), submit  
 323 the findings to the entity contracting with the state or the  
 324 individual substantially affected, who shall be advised in  
 325 writing that they may submit a written response within 20  
 326 working days after receipt of the findings. The response and the  
 327 inspector general's rebuttal to the response, if any, must be  
 328 included in the final audit report.

329 (g)-(f) The inspector general shall submit the final report  
 330 to the agency head, the Auditor General, and, for state agencies  
 331 under the jurisdiction of the Governor, the Chief Inspector  
 332 General.

333 (h)-(g) The Auditor General, in connection with the  
 334 independent postaudit of the same agency pursuant to s. 11.45,  
 335 shall give appropriate consideration to internal audit reports  
 336 and the resolution of findings therein. The Legislative Auditing  
 337 Committee may inquire into the reasons or justifications for  
 338 failure of the agency head to correct the deficiencies reported  
 339 in internal audits that are also reported by the Auditor General  
 340 and shall take appropriate action.

341 (i)-(h) The inspector general shall monitor the  
 342 implementation of the state agency's response to any report on  
 343 the state agency issued by the Auditor General or by the Office  
 344 of Program Policy Analysis and Government Accountability. No  
 345 later than 6 months after the Auditor General or the Office of  
 346 Program Policy Analysis and Government Accountability publishes  
 347 a report on the state agency, the inspector general shall  
 348 provide a written response to the agency head or, for state

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349 agencies under the jurisdiction of the Governor, the Chief  
350 Inspector General on the status of corrective actions taken. The  
351 inspector general shall file a copy of such response with the  
352 Legislative Auditing Committee.

353 (j) ~~(i)~~ The inspector general shall develop long-term and  
354 annual audit plans based on the findings of periodic risk  
355 assessments. The plan, where appropriate, should include  
356 postaudit samplings of payments and accounts. The plan shall  
357 show the individual audits to be conducted during each year and  
358 related resources to be devoted to the respective audits. The  
359 Chief Financial Officer, to assist in fulfilling the  
360 responsibilities for examining, auditing, and settling accounts,  
361 claims, and demands pursuant to s. 17.03(1), and examining,  
362 auditing, adjusting, and settling accounts pursuant to s. 17.04,  
363 may use audits performed by the inspectors general and internal  
364 auditors. For state agencies under the jurisdiction of the  
365 Governor, the audit plans shall be submitted to the Chief  
366 Inspector General. The plan shall be submitted to the agency  
367 head for approval. A copy of the approved plan shall be  
368 submitted to the Auditor General.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**

20th District

March 3, 2015

The Honorable Jeremy Ring, Chairman  
Senate Committee on Governmental Oversight and Accountability  
525 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request consideration of Senate Bill SB 1304/Inspectors General by the Senate Governmental Oversight and Accountability Committee at your earliest convenience.

This bill will authorize the Chief Inspector General to issue and enforce subpoenas and provide additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general and staff;

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

Cc: Joe McVaney, Staff Director; Allison Rudd, Administrative Assistant

**REPLY TO:**

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



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

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

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

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BILL: SPB 7056

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Administrative Procedures

DATE: March 25, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		<b>GO Submitted as Committee Bill</b>
2.				
3.				

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**I. Summary:**

SPB 7056 amends ss. 120.54 and 120.74, F.S., and replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The agency head and general counsel must certify that they have reviewed the plan and that the agency conducts a review of its rulemaking authority. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of a non-compliant agency until that agency completes the required action or the end of the next regular legislative session, whichever is earlier. The bill repeals s. 120.7455, F.S., pertaining to the online survey of regulatory impacts. Additionally, the bill rescinds the suspension of rulemaking authority made under s. 120.745, F.S.

The bill has an effective date of July 1, 2015, except as otherwise provided.

**II. Present Situation:**

**Introduction**

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>1</sup> The effect of an agency statement determines whether it meets the statutory

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<sup>1</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

definition of a rule, regardless of how the agency characterizes the statement.<sup>2</sup> If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.<sup>3</sup>

Rulemaking authority is delegated by the Legislature<sup>4</sup> authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>5</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>6</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>7</sup> The grant of rulemaking authority itself need not be detailed.<sup>8</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>9</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.<sup>10</sup> Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.<sup>11</sup>

In 1996 the Legislature extensively revised<sup>12</sup> agency rulemaking under the Administrative Procedure Act (APA)<sup>13</sup> to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

### **Section 120.54(1)(b), F.S.: The “180 Day” Requirement**

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before implementing rules are adopted.<sup>14</sup> If a law is enacted that requires agency rules for its proper implementation, “such rules shall be drafted and formally proposed as provided in s. 120.54, F.S., within 180 days after

<sup>2</sup> *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1<sup>st</sup> DCA 1977).

<sup>3</sup> *McDonald v. Dep’t of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1<sup>st</sup> DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1<sup>st</sup> DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1<sup>st</sup> DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1<sup>st</sup> DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5<sup>th</sup> DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1<sup>st</sup> DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5<sup>th</sup> DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5<sup>th</sup> DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1<sup>st</sup> DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1<sup>st</sup> DCA 2010).

<sup>4</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>5</sup> Section 120.52(17), F.S.

<sup>6</sup> Section 120.54(1)(a), F.S.

<sup>7</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>8</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>9</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>10</sup> *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

<sup>11</sup> *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

<sup>12</sup> Ch. 96-159, LOF.

<sup>13</sup> Chapter 120, F.S.

<sup>14</sup> Section 120.54(1)(c), F.S.

the effective date of the act, unless the act provides otherwise.”<sup>15</sup> This “180 day requirement” predates the 1996 revisions.<sup>16</sup>

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.<sup>17</sup> Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

### ***Joint Administrative Procedures Committee Monitoring and Agency Compliance***

Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.<sup>18</sup> JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as “shall adopt rules,” or provides that the agency “shall establish” some standard or “must” make some policy), or restates an existing “mandate” for rulemaking, JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180-day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. In recent years, JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a “suggestion” instead of a mandatory rulemaking requirement. Again, on February 2, 2015, JAPC received a report from its staff reflecting continuing related problems.

### ***“Directive” vs. “Mandate”***

Courts generally interpret words in statute such as “shall” or “must” as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.<sup>19</sup> A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,<sup>20</sup>

<sup>15</sup> Section 120.54(1)(b), F.S.

<sup>16</sup> The 180 requirement was enacted as Ch. 85-104, s. 7, LOF.

<sup>17</sup> Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

<sup>18</sup> Joint Rule 4.6.

<sup>19</sup> *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).

<sup>20</sup> Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

including where the agency does not act within the 180-day requirement. The APA provides no other process to enforce the 180-day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

## **Section 120.74, F.S.: Biennial Reporting**

### ***1996 Reporting Requirement***

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House for legislative consideration.<sup>21</sup>

Another 1996 law added a requirement for ongoing rulemaking review, revision and reporting.<sup>22</sup> Under that law as presently amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.<sup>23</sup> The agency head must report the results and other required information to the President, Speaker, JAPC, and “each appropriate standing committee of the Legislature” biennially on Oct. 1.<sup>24</sup>

### ***Limited Utility of s. 120.74 Reports***

Agencies as defined in the APA,<sup>25</sup> including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one 2009 report from a school district identified the following changes to the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board’s policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.<sup>26</sup>

The 2013 report for the same school district states the following as “what & why the policy changed” for the student code of conduct:

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<sup>21</sup> Ch. 96-159, s. 9(2), LOF.

<sup>22</sup> Ch. 96-399, s. 46, LOF, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Ch.'s 2006-82, s. 9, and 2008-179, s. 8, LOF.

<sup>23</sup> Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).

<sup>24</sup> Section 120.74(2), F.S.

<sup>25</sup> Section 120.52(1), F.S.

<sup>26</sup> School Board of Manatee County, “Section 120.74 Report” (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.<sup>27</sup>

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.<sup>28</sup>

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to (the agency's) rules as a result of the review..."<sup>29</sup> One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.<sup>30</sup> A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced).<sup>31</sup> Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.<sup>32</sup>

Educational units are exempt from the biennial reporting requirements.<sup>33</sup>

### ***Regulatory Plans***

In 2011 the reporting requirements were amended to require each agency to file an annual regulatory plan in addition to the biennial reports.<sup>34</sup> The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

### **Section 120.745, F.S. - Retrospective Economic Review of Rules**

In November 2010, the Legislature enacted a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.<sup>35</sup>

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<sup>27</sup> School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.

<sup>28</sup> School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.

<sup>29</sup> Section 120.74(2), F.S.

<sup>30</sup> Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.

<sup>31</sup> Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding § 120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.

<sup>32</sup> Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

<sup>33</sup> Section 2, ch. 2014-39, LOF, codified as s. 120.745(5), F.S.

<sup>34</sup> Ch. 2011-225, s. 4, LOF. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2) to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

<sup>35</sup> Section 120.541(3), F.S.

The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the first year after the rule is implemented.<sup>36</sup> Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of \$1 million in the aggregate within five years of going into effect.<sup>37</sup>

The requirements applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011, the Legislature enacted s. 120.745, F.S., to require a retrospective economic analysis of those existing rules. All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)<sup>38</sup> were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.<sup>39</sup> At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.<sup>40</sup>

The Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).<sup>41</sup> Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the law exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011<sup>42</sup> and all final reviews by December 31, 2013.<sup>43</sup>

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<sup>36</sup> Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.

<sup>37</sup> Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

<sup>38</sup> A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.

<sup>39</sup> Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

<sup>40</sup> Section 120.745(5), F.S.

<sup>41</sup> Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.

<sup>42</sup> As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At <https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html> (accessed Oct. 22, 2013).

<sup>43</sup> Section 120.745(9), F.S.

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five<sup>44</sup> identified rules requiring Compliance Economic Reviews.<sup>45</sup> Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding \$1 million over the five year period from July 1, 2011 to July 1, 2016.

### **Section 120.7455, F.S. - Your Voice Survey**

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,<sup>46</sup> respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the “Your Voice Survey.”

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011 – July 1, 2014, section 120.7455, F.S.,<sup>47</sup> was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455, F.S., was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.<sup>48</sup> If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.<sup>49</sup>

The survey was initiated in October 2011 and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

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

**Section 1** amends s. 120.54, F.S., to eliminate the current 180 day time period granted to agencies to draft and formally propose rules necessary to implement legislation. The new time

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<sup>44</sup> Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.

<sup>45</sup> As required by the statute, “non-exempt” agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).

<sup>46</sup> At <http://www.surveymonkey.com/s/FloridaRegReformSurvey> (accessed Oct. 22, 2013).

<sup>47</sup> Ch. 2011-225, s. 6, LOF.

<sup>48</sup> Section 120.7455(3), F.S.

<sup>49</sup> Section 120.7455(4), F.S.

frames for agencies to begin rulemaking will be no later than November 1 for the notice of rule development and April 1 for the notice of proposed rule.

**Section 2** amends s. 120.74, F.S., to replace the current biennial reports with an annual regulatory plan, establish deadlines for specific actions in the rulemaking process and suspend agency rulemaking if an agency fails to comply with certain requirements.

### ***Regulatory Plan***

The bill requires each agency to submit a regulatory plan by October 1 of each year. The regulatory plan must include:

- A listing of each law enacted or amended during the previous 12 months that modifies the duties and authority of the agency. For each law listed, the agency must determine whether:
  - The agency must adopt rules to implement the law;
  - If rulemaking is necessary to implement the law;
    - Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.
    - The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).and
  - If rulemaking is not necessary, the reasons that the law may be implemented without rulemaking.
- A listing of any other laws the agency expects to implement by rulemaking before the following July 1. For each law listed, the agency must state the purpose of the rulemaking.

If the Governor or Attorney General provides a letter to JAPC stating that a law affects all or most agencies, the agency may exclude the law from its regulatory plan.

The regulatory plan must also include information relating to any law identified in a previous year's regulatory plan as requiring rulemaking for implementation for which no notice of proposed rule has been published. The plan must include a certification by the agency head and general counsel that those individuals have reviewed the plan and that the agency regularly reviews all of its agency rules to determine whether the rules remain consistent with the agency's rulemaking authority and legal authority.

If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency may identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

### ***Publication and Delivery to JAPC***

The bill requires the agency to publish by October 1 of each year the annual regulatory plan on the agency website or other state website established for such publication. The agency must electronically provide a copy of the certification signed by the agency head and general counsel to JAPC and include the certification in the agency's legislative budget request. The agency must publish a notice in the Florida Administrative Register of the date of publication of the regulatory plan, including a hyperlink or website address for the regulatory plan.



For a board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the Department of Business and Professional Regulation (DBPR), may coordinate with DBPR, and a board established under s. 20.43(3)(g), F.S., may coordinate with the Department of Health (DOH), for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required regulatory plan to JAPC.

The bill also requires that regulatory plans published in accordance with the provisions of this bill and regulatory plans published before July 1, 2014, must be made available to the public online for ten years. This will assist elected officials and the general public in reviewing agency implementation of laws through rulemaking.

#### ***DBPR AND DOH Review of Board Plans***

By October 15 of each year, DBPR shall file with JAPC a certification that DBPR has reviewed each board's and commission's regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from DBPR. A certification may relate to more than one board or commission.

By October 15 of each year, DOH shall file with JAPC a certification that DOH has reviewed each board's regulatory plan for each board established under s. 20.43(3)(g), F.S. A certification may relate to more than one board.

#### ***New Deadline for Rule Development***

The bill establishes a new deadline for rule development. Rather than 180 days after the effective date of the legislation, the agency must publish a notice of rule development by November 1 after enactment or by the date the agency identified in the regulatory plan. The agency must then publish a notice of proposed rule by the following April 1. The agency may extend this deadline until the following October 1 if the agency publishes a notice of extension in the Florida Administrative Register (FAR). The deadline for the notice of proposed rule can be further extended by the agency in the subsequent regulatory plan.

The bill permits an agency to correct a published regulatory plan at any time for the purpose of extending or concluding the affecting rulemaking proceeding, and such plan is deemed corrected as of the Oct. 1 due date. The agency is required to publish a notice of the date of correction for the affected rulemaking proceeding in the FAR.

#### ***Certification***

Each time an agency files a notice of rule development, a notice for a deadline extension, a regulatory plan correction, or completion of an act that terminates suspension of rulemaking authority, the agency must file a certification with JAPC noting the action taken. The certification may apply to more than one notice or contemporaneous act. The date or dates of compliance must be noted in each certificate.

### ***Supplementing the Regulatory Plan***

After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to JAPC from the Governor or the Attorney General.

The supplement must include the information required for agency's annual regulatory plan and shall be published on its website or FAR's website, but no certification or delivery to JAPC is required. The agency shall publish in the FAR notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of Nov. 1 or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of April 1 or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by filing a notice of proposed rule. If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the agency's next annual regulatory plan.

### ***Failure to Comply***

If an agency fails to publish and provide its completed regulatory plan by October 1, or publish a notice of proposed rule by April 1, the agency's entire rulemaking authority shall be suspended automatically as of the due date of the required action. Such suspension will continue until the date the agency completes the required action or until the end of the next regular session of the legislature, whichever occurs first. This suspension does not apply to the adoption of emergency rules or rulemaking necessary to comply with federal law.

During the period of suspension:

- The agency has no authority to file rules for adoption under s. 120.54, F.S., but may conduct public hearings that were noticed before the period of suspension.
- The agency is not authorized to adopt or apply a statement defined as a rule under s. 120.52(16), F.S. unless the statement was filed for adoption under s. 120.54(3), F.S., before the suspension.
- The time requirements are tolled under s. 120.54, F.S., for filing a rule for adoption in a rulemaking proceeding initiated by the agency before the date of suspension. The time requirements will resume on the date the suspension ends.

### ***Educational Units***

This section does not apply to educational units, including school districts.

**Section 3** repeals s. 120.7455, F.S., relating to an Internet-based public survey of regulatory impacts.

**Section 4** rescinds suspension of rulemaking authority under s. 120.745, F.S., effective upon this bill becoming law. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

**Section 5** provides an effective date of July 1, 2015, except as otherwise provided in the bill and except for this section which shall take effect upon this act becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill requires agencies to publish additional information in the FAR which has an associated cost. Such additional publication requirements will have an indeterminate, but minimal fiscal impact on agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 120.54 and 120.74 of the Florida Statutes.

This bill repeals section 120.7455 of the Florida Statutes.

The bill rescinds the suspension of rulemaking authority under section 120.745 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02150A-15

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1 A bill to be entitled  
 2 An act relating to administrative procedures; amending  
 3 s. 120.54, F.S.; revising the deadline to propose  
 4 rules implementing new laws; amending s. 120.74, F.S.;  
 5 revising requirements for the annual review of agency  
 6 rules; providing procedures for preparing and  
 7 publishing regulatory plans; specifying requirements  
 8 for such plans; requiring publication by specified  
 9 dates of notices of rule development and of proposed  
 10 rules necessary to implement new laws; providing for  
 11 suspension of an agency's rulemaking authority under  
 12 certain circumstances; providing for applicability;  
 13 repealing s. 120.7455, F.S., relating to legislative  
 14 survey of regulatory impacts; providing for rescission  
 15 of the suspension of rulemaking authority made under  
 16 s. 120.745, F.S.; providing effective dates.  
 17  
 18 Be It Enacted by the Legislature of the State of Florida:  
 19  
 20 Section 1. Paragraph (b) of subsection (1) of section  
 21 120.54, Florida Statutes, is amended to read:  
 22 120.54 Rulemaking.—  
 23 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
 24 EMERGENCY RULES.—  
 25 (b) Whenever an act of the Legislature is enacted which  
 26 requires implementation of the act by rules of an agency within  
 27 the executive branch of state government, such rules shall be  
 28 drafted and formally proposed as provided in this section within  
 29 the times provided in s. 120.74(5) and (6) 180 days after the

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30 ~~effective date of the act, unless the act provides otherwise.~~  
 31 Section 2. Section 120.74, Florida Statutes, is amended to  
 32 read:  
 33 (Substantial rewording of section. See  
 34 s. 120.74, F.S., for present text.)  
 35 120.74 Agency annual rulemaking and regulatory plans;  
 36 reports.—  
 37 (1) REGULATORY PLAN.—By October 1 of each year, each agency  
 38 shall prepare an implementation and rulemaking plan.  
 39 (a) The plan must include a listing of each law enacted or  
 40 amended during the previous 12 months which creates or modifies  
 41 the duties or authority of the agency. If the Governor or the  
 42 Attorney General provides a letter to the committee stating that  
 43 a law affects all or most agencies, the agency may exclude the  
 44 law from its plan. For each law listed by an agency under this  
 45 paragraph, the plan must state:  
 46 1. Whether the agency must adopt rules to implement the  
 47 law.  
 48 2. If rulemaking is necessary to implement the law:  
 49 a. Whether a notice of rule development has been published  
 50 and, if so, the citation to such notice in the Florida  
 51 Administrative Register.  
 52 b. The date by which the agency expects to publish the  
 53 notice of proposed rule under s. 120.54(3)(a).  
 54 3. If rulemaking is not necessary to implement the law, a  
 55 concise written explanation of the reasons why the law may be  
 56 implemented without rulemaking.  
 57 (b) The plan must also include a listing of each law not  
 58 otherwise listed pursuant to paragraph (a) which the agency

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59 expects to implement by rulemaking before the following July 1,  
 60 except emergency rulemaking. For each law listed under this  
 61 paragraph, the plan must state whether the rulemaking is  
 62 intended to simplify, clarify, increase efficiency, improve  
 63 coordination with other agencies, reduce regulatory costs, or  
 64 delete obsolete, unnecessary, or redundant rules.

65 (c) The plan must include any desired update to the prior  
 66 year's regulatory plan or supplement published pursuant to  
 67 subsection (8). If, in a prior year, a law was identified under  
 68 this paragraph or under subparagraph (a)1. as a law requiring  
 69 rulemaking to implement but a notice of proposed rule has not  
 70 been published:

71 1. The agency may identify and again list such law, noting  
 72 the applicable notice of rule development by citation to the  
 73 Florida Administrative Register; or

74 2. If the agency has subsequently determined that  
 75 rulemaking is not necessary to implement the law, the agency may  
 76 identify such law, reference the citation to the applicable  
 77 notice of rule development in the Florida Administrative  
 78 Register, and provide a concise written explanation of the  
 79 reason why the law may be implemented without rulemaking.

80 (d) The plan must include a certification executed on  
 81 behalf of the agency by both the agency head, or, if the agency  
 82 head is a collegial body, the chair or equivalent presiding  
 83 officer; and the agency general counsel, or, if the agency does  
 84 not have a general counsel, the individual acting as principal  
 85 legal advisor to the agency head. The certification must:

86 1. Verify that the persons executing the certification have  
 87 reviewed the plan.

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88 2. Verify that the agency regularly reviews all of its  
 89 rules and identify the period during which all rules have most  
 90 recently been reviewed to determine if the rules remain  
 91 consistent with the agency's rulemaking authority and the laws  
 92 implemented.

93 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

94 (a) By October 1 of each year, each agency shall:

95 1. Publish its regulatory plan on its website or on another  
 96 state website established for publication of administrative law  
 97 records. A clearly labeled hyperlink to the current plan must be  
 98 included on the agency's primary website homepage.

99 2. Electronically deliver to the committee a copy of the  
 100 certification required in paragraph (1)(d).

101 3. Publish in the Florida Administrative Register a notice  
 102 identifying the date of publication of the agency's regulatory  
 103 plan. The notice must include a hyperlink or website address  
 104 providing direct access to the published plan.

105 (b) To satisfy the requirements of paragraph (a), a board  
 106 established under s. 20.165(4), and any other board or  
 107 commission receiving administrative support from the Department  
 108 of Business and Professional Regulation, may coordinate with the  
 109 Department of Business and Professional Regulation, and a board  
 110 established under s. 20.43(3)(g) may coordinate with the  
 111 Department of Health, for inclusion of the board's or  
 112 commission's plan and notice of publication in the coordinating  
 113 department's plan and notice and for the delivery of the  
 114 required documentation to the committee.

115 (c) A regulatory plan prepared under subsection (1) and any  
 116 regulatory plan published under this chapter before July 1,

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117 2014, shall be maintained at an active website for 10 years  
 118 after the date of initial publication on the agency's website or  
 119 another state website.

120 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to  
 121 the requirements of s. 216.023 and pursuant to s. 216.351, a  
 122 copy of the most recent certification executed under paragraph  
 123 (1) (d), clearly designated as such, shall be included as part of  
 124 the agency's legislative budget request.

125 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each  
 126 year:

127 (a) For each board established under s. 20.165(4) and any  
 128 other board or commission receiving administrative support from  
 129 the Department of Business and Professional Regulation, the  
 130 Department of Business and Professional Regulation shall file  
 131 with the committee a certification that the department has  
 132 reviewed each board's and commission's regulatory plan. A  
 133 certification may relate to more than one board or commission.

134 (b) For each board established under s. 20.43(3) (g), the  
 135 Department of Health shall file with the committee a  
 136 certification that the department has reviewed the board's  
 137 regulatory plan. A certification may relate to more than one  
 138 board.

139 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each  
 140 year, each agency shall publish a notice of rule development  
 141 under s. 120.54(2) for each law identified in the agency's  
 142 regulatory plan pursuant to subparagraph (1) (a)1. for which  
 143 rulemaking is necessary to implement but for which the agency  
 144 did not report the publication of a notice of rule development  
 145 under subparagraph (1) (a)2.

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146 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for  
 147 which implementing rulemaking is necessary as identified in the  
 148 agency's plan pursuant to subparagraph (1) (a)1. or subparagraph  
 149 (1) (c)1., the agency shall publish a notice of proposed rule  
 150 pursuant to s. 120.54(3) (a) by April 1 of the year following the  
 151 deadline for the regulatory plan. This deadline may be extended  
 152 if the agency publishes a notice of extension in the Florida  
 153 Administrative Register identifying each rulemaking proceeding  
 154 for which an extension is being noticed by citation to the  
 155 applicable notice of rule development as published in the  
 156 Florida Administrative Register. An extension shall expire on  
 157 October 1 after the April 1 deadline, provided that the  
 158 regulatory plan due on October 1 may further extend the  
 159 rulemaking proceeding by identification pursuant to subparagraph  
 160 (1) (c)1. or conclude the rulemaking proceeding by identification  
 161 pursuant to subparagraph (1) (c)2. A published regulatory plan  
 162 may be corrected at any time to accomplish the purpose of  
 163 extending or concluding an affected rulemaking proceeding and is  
 164 deemed corrected as of the October 1 due date. Upon publication  
 165 of a correction, the agency shall publish in the Florida  
 166 Administrative Register a notice of the date of the correction  
 167 identifying the affected rulemaking proceeding by applicable  
 168 citation to the Florida Administrative Register.

169 (7) CERTIFICATIONS.—Each agency shall file a certification  
 170 with the committee upon compliance with subsection (5), upon  
 171 filing a notice under subsection (6) of either a deadline  
 172 extension or a regulatory plan correction, and upon the  
 173 completion of an act that terminates a suspension under  
 174 subsection (9). A certification may relate to more than one

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175 notice or contemporaneous act. The date or dates of compliance  
 176 shall be noted in each certification.

177 (8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of  
 178 the regulatory plan, the agency shall supplement the plan within  
 179 30 days after a bill becomes a law if the law is enacted before  
 180 the next regular session of the Legislature and the law  
 181 substantively modifies the agency's specifically delegated legal  
 182 duties, unless the law affects all or most state agencies as  
 183 identified by letter to the committee from the Governor or the  
 184 Attorney General. The supplement must include the information  
 185 required in paragraph (1)(a) and shall be published as required  
 186 in subsection (2), but no certification or delivery to the  
 187 committee is required. The agency shall publish in the Florida  
 188 Administrative Register notice of publication of the supplement,  
 189 and include a hyperlink on its website or web address for direct  
 190 access to the published supplement. For each law reported in the  
 191 supplement, if rulemaking is necessary to implement the law, the  
 192 agency shall publish a notice of rule development by the later  
 193 of the date provided in subsection (5) or 60 days after the bill  
 194 becomes a law, and a notice of proposed rule shall be published  
 195 by the later of the date provided in subsection (6) or 120 days  
 196 after the bill becomes a law. The proposed rule deadline may be  
 197 extended to the following October 1 by notice as provided in  
 198 subsection (6). If such proposed rule has not been filed by  
 199 October 1, a law included in a supplement shall also be included  
 200 in the next annual plan pursuant to subsection (1).

201 (9) FAILURE TO COMPLY.—If an agency fails to comply with a  
 202 requirement of paragraph (2)(a) or subsection (6), the entire  
 203 rulemaking authority delegated to the agency by the Legislature

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204 under any statute or law shall be suspended automatically as of  
 205 the due date of the required action and shall remain suspended  
 206 until the date the agency completes the required act or until  
 207 the end of the next regular session of the Legislature,  
 208 whichever occurs first.

209 (a) During a period of suspension under this subsection,  
 210 the agency has no authority to file rules for adoption under s.  
 211 120.54, but may complete any action required by this section and  
 212 may conduct public hearings that were noticed before the period  
 213 of suspension.

214 (b) A suspension under this subsection does not authorize  
 215 an agency to adopt or apply a statement defined as a rule under  
 216 s. 120.52(16) unless the statement was filed for adoption under  
 217 s. 120.54(3) before the suspension.

218 (c) A suspension under this subsection tolls the time  
 219 requirements under s. 120.54 for filing a rule for adoption in a  
 220 rulemaking proceeding initiated by the agency before the date of  
 221 the suspension. The time requirements shall resume on the date  
 222 the suspension ends.

223 (d) This subsection does not suspend the adoption of  
 224 emergency rules under s. 120.54(4) or rulemaking necessary to  
 225 ensure the state's compliance with federal law.

226 (10) EDUCATIONAL UNITS.—This section does not apply to  
 227 educational units.

228 Section 3. Section 120.7455, Florida Statutes, is repealed.

229 Section 4. Effective upon this act becoming a law, any  
 230 suspension of rulemaking authority under s. 120.745, Florida  
 231 Statutes is rescinded. This section does not affect any  
 232 restriction, suspension, or prohibition of rulemaking authority

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233 under any other provision of law.

234 Section 5. Except as otherwise expressly provided in this  
235 act and except for this section, which shall take effect upon  
236 this act becoming a law, this act shall take effect July 1,  
237 2015.

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

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

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

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BILL: SPB 7058

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Administrative Procedures

DATE: March 24, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney		<b>GO Submitted as Committee Bill</b>
2.				
3.				

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**I. Summary:**

SPB 7058 amends the rulemaking procedures of the Administrative Procedure Act to improve public notices and the preparation of statement of estimated regulatory costs (SERC) beginning in the period of rule development. The bill also revises the requirements for preparing a SERC to improve and standardize guidance for administrative agencies in preparing information necessary for decision makers and affected constituencies to understand the economic and policy impacts of proposed rules.

The bill amends the statutory rulemaking process to:

- Conform the information required in notices of rule development to certain information required for notices of proposed rules.
- Require published notices of proposed rules to state whether the agency conducted a rule development workshop.
- Require agencies to make certain documents available by hyperlink from published notices to the agency website.
- Amend the requirements for rule development to include in workshops and other public hearings the development of information beneficial to the preparation of a SERC.
- Require agencies to ensure the availability of personnel responsible for preparing a SERC at rule development workshops, hearings, and public hearings on proposed rules.
- Create six new factors agencies must consider when evaluating the impact of proposed rules on small businesses, presuming each of these factors to be adverse to small business.
- Clarify present statutes on hearings, agency responses to submitted lower cost regulatory alternatives and conform other provisions to these changes.

The statutory requirements for preparing a SERC are revised to:

- Authorize agencies to respond to a lower cost regulatory alternative by modifying a proposed rule to substantially reduce estimated regulatory costs, and, if so, requiring the agency to

revise its SERC and include a summary of the revised SERC in subsequent rulemaking notices.

- Require agencies to provide the rules ombudsman with any revised SERC.
- Revise the impacts and costs agencies must evaluate when preparing a SERC and provide specific guidance on the discrete types of costs and economic impacts of a proposed rule.

The bill also requires a petitioner proposing the creation of a community development district to provide a statement explaining the prospective economic impact of the proposed district rather than completing a SERC.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Agency Rulemaking

One important aspect of the Administrative Procedure Act (APA)<sup>1</sup> is the emphasis on public notice and opportunity for participation in agency rulemaking. A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>2</sup> The APA provides specific requirements agencies must follow in order to adopt rules.<sup>3</sup>

With some exceptions,<sup>4</sup> required rulemaking begins with an agency publishing a notice of rule development in the Florida Administrative Register (F.A.R.).<sup>5</sup> If the agency conducts public rule development workshops,<sup>6</sup> the persons responsible for preparing the draft rule under consideration must be available to explain the proposal and respond to public questions or comments.<sup>7</sup>

Once the final form of the proposed rule is developed (whether the proposal creates a new rule or amends or repeals an existing rule), the agency must publish a notice of the proposed rule before it may be adopted.<sup>8</sup> The publication of this notice triggers certain deadlines for the rulemaking process.<sup>9</sup>

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<sup>1</sup> Ch. 120, F.S.

<sup>2</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>3</sup> Section 120.54, F.S.

<sup>4</sup> Rule repeals do not require initial rule development. Section 120.54(2)(a), F.S. Emergency rulemaking proceeds separately under s. 120.54(4), F.S.

<sup>5</sup> Section 120.54(2)(a), F.S. The APA is silent on the initial, internal process an agency follows prior to initiating public rule development. *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1<sup>st</sup> DCA 1990).

<sup>6</sup> An agency must conduct public workshops if so requested in writing by any affected person unless the agency head explains in writing why a workshop is not necessary. Section 120.52(c), F.S.

<sup>7</sup> Section 120.52(c), F.S.

<sup>8</sup> Section 120.54(3)(a)1., F.S.

<sup>9</sup> Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.54(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

Each notice must include the full text of the proposed rule and other additional information, such as a summary of the agency's statement of estimated regulatory costs (SERC) and the opportunity for anyone to provide the agency with information pertaining to the SERC or to propose a lower cost regulatory alternative to the proposed rule. The notice must also state the procedure to request a hearing on the proposed rule.<sup>10</sup>

At a public rulemaking hearing agency staff must be available to explain the proposed rule and respond to public questions or comments. Material pertaining to the proposed rulemaking submitted to the agency between the date of publishing the notice of proposed rule and the end of the final public hearing must be considered by the agency and made a part of the rulemaking record.<sup>11</sup> If a person substantially affected by the proposed rule shows the proceeding does not provide adequate opportunity to protect those interests, and the agency concurs, the agency must suspend the rulemaking proceeding and convene a separate, more formal proceeding, including referring the matter to the Division of Administrative Hearings (DOAH). Once the separate proceeding concludes the rulemaking proceeding resumes.<sup>12</sup>

Subsequent to the final rulemaking hearing, if the agency makes any substantial change to the proposed rule the agency must provide additional notice and publish a notice of change in the F.A.R. at least 21 days before the rule may be filed for adoption.<sup>13</sup> If the change increases the regulatory costs of the rule the agency must revise its SERC.<sup>14</sup>

### **Statement of Estimated Regulatory Costs (SERC)**

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.<sup>15</sup> Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule,<sup>16</sup> but are required to prepare a SERC if:

- The proposed rule will have an adverse impact on small businesses;<sup>17</sup>
- The proposed rule is likely to directly or indirectly increase aggregate regulatory costs by more than \$200,000 in the first year after the rule is implemented;<sup>18</sup> or
- A substantially affected person submits a proposal for a lower cost regulatory alternative to the proposed rule. The proposal must substantially accomplish the same objectives in the law being implemented by the agency.<sup>19</sup>

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<sup>10</sup> Section 120.54(3)(a)1., F.S.

<sup>11</sup> Section 120.54(3)(c)1., F.S.

<sup>12</sup> Section 120.54(3)(c)2., F.S.

<sup>13</sup> Section 120.54(3)(d)1., F.S.

<sup>14</sup> Section 120.541(1)(c), F.S.

<sup>15</sup> Section 120.541(2), F.S. Beginning in 1975, the APA required agencies to estimate the economic impact of proposed rules or explain why such an estimate could not be prepared. Ch. 75-191, s. 3, LOF, codified at 120.54(1), Fla. Stat. (1975).

<sup>16</sup> Section 120.54(3)(b)1., F.S.

<sup>17</sup> Sections 120.54(3)(b)1.a. & 120.541(1)(b), F.S.

<sup>18</sup> Sections 120.54(3)(b)1.b. & 120.541(1)(b), F.S.

<sup>19</sup> Section 120.541(1)(a), F.S. Upon the submission of the lower cost regulatory alternative, the agency must revise its initial SERC, or prepare one if not done previously, and either adopt the proposed alternative or state its reasons for rejecting the proposal.

Each SERC, at a minimum, must contain the following elements:

- An economic analysis of the proposed rule’s potential direct or indirect impacts,<sup>20</sup> including whether any of the following exceed an aggregate of \$1,000,000 in the first five years after implementing the rule:
  - Any adverse impact on economic growth, private sector job creation or employment, or private sector investment;<sup>21</sup>
  - Any adverse impact on business competitiveness (including the ability to compete with businesses in other states or markets), productivity, or innovation;<sup>22</sup> or
  - Any likely increase in regulatory costs (including transactional costs).<sup>23</sup>
- A good faith estimate of the number and a general description of the individuals and entities required to comply with the rule.<sup>24</sup>
- A good faith estimate of the cost of implementing the rule to the agency and any other state or local governmental entities, including any anticipated impacts on state or local revenues.<sup>25</sup>
- A good faith estimate of the transactional costs members of the public and local governmental entities are likely to incur to comply with the rule.<sup>26</sup>
- An analysis of the impact of the rule on small businesses, including the agency’s explanation for not implementing alternatives which could reduce adverse impacts, and of the impact on small counties and small cities.<sup>27</sup>
- A description of each lower cost regulatory alternative submitted to the agency with a statement adopting the alternative or explaining the reasons for rejection.<sup>28</sup>

Additional information may be included if the agency determines such would be useful.<sup>29</sup> The agency’s failure to prepare a SERC when required or failure to respond to a written proposed lower cost regulatory alternative<sup>30</sup> is a material failure to follow the APA rulemaking

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<sup>20</sup> Section 120.541(2)(a), F.S.

<sup>21</sup> Section 120.541(2)(a)1., F.S.

<sup>22</sup> Section 120.541(2)(a)2., F.S.

<sup>23</sup> Section 120.541(2)(a)3., F.S.

<sup>24</sup> Section 120.541(2)(b), F.S.

<sup>25</sup> Section 120.541(2)(c), F.S.

<sup>26</sup> Section 120.541(2)(d), F.S. The definition of “transactional costs” is discussed later in this analysis.

<sup>27</sup> Section 120.541(2)(e), F.S. This statute incorporates the definitions of “small city” and “small county” in ss. 120.52(18) & 120.52(19), F.S., respectively. The statute also incorporates the definition of “small business” in s. 288.703, F.S. *Compare*, s. 120.54(3)(b)2., F.S., which uses similar language requiring agencies to consider the impact of every proposed rule, amendment, or repeal on small businesses, small cities, and small counties but also permits agencies to rely on expanded versions of these definitions if necessary to more adapt the rule for more specific needs or problems. Section 120.54(3)(b)2.a., F.S., specifies five methods agencies must consider to reduce the rule’s impact on small businesses, cities, and counties. If the agency determines the rule will affect defined small businesses, notice of the rule must be sent to the rules ombudsman in the Executive Office of the Governor. Section 120.54(3)(b)2.b.(I), F.S. The agency must adopt regulatory alternatives reducing impacts on small businesses timely offered by the rules ombudsman or provide the Joint Administrative Procedures Committee a written explanation for failing to do so. Section 120.54(3)(b)2.b.(II), (III), F.S.

<sup>28</sup> Section 120.541(2)(g), F.S.

<sup>29</sup> Section 120.541(2)(f), F.S.

<sup>30</sup> The party submitting a proposal to the agency must designate it as a lower cost regulatory alternative or at a minimum discuss cost issues with the proposed rule in order to inform the agency of the purpose of the submittal. A party challenging the validity of a school board rule argued the board failed to prepare a SERC after receiving a lower cost regulatory alternative. The administrative law judge (ALJ) found the proposal submitted to the board neither referenced s. 120.541, F.S., nor asserted it would result in lower costs. The ALJ ruled the failure to demonstrate the proposal presented a lower cost alternative meant the agency was not informed of the purpose of the submission and thus had a duty to prepare a SERC or

requirements.<sup>31</sup> Consequently, if challenged the rule could be found to be an invalid exercise of delegated legislative authority.<sup>32</sup> Even when the agency properly prepares a SERC and responds to all proposed lower cost regulatory alternatives, the resulting rule could be challenged as an invalid exercise of delegated legislative authority if the rule imposes regulatory costs greater than a proposed alternative which substantially accomplishes the same result.<sup>33</sup>

If the economic impact of a proposed rule exceeds SERC limits, then the rule must be submitted to the legislature 30 days before the next regular session begins.<sup>34</sup> As previously mentioned, a SERC is necessary when the economic impact would have an impact of more than \$1 million dollars over five years on employment, business competitiveness or regulatory costs.<sup>35</sup> The proposed rule cannot take effect until the Legislature ratifies the proposed rule.<sup>36</sup>

The specific requirements of s. 120.541, F.S., were adopted in 1996 as part of the comprehensive revision of the APA.<sup>37</sup> The revisions resulted from the Final Report of the Commission appointed by the Governor to study and recommend improvements to the APA, particularly in rulemaking and making agencies more accountable to the Legislature and the public.<sup>38</sup> The Commission found the purpose for economic impact statements was to assist both the government and the public to understand the potential financial impacts of a rule before adoption but “[t]he quality of economic analyses ... prepared by state agencies is inadequate, and existing law requirements ... are ineffective.”<sup>39</sup> Although the Commission recommended a number of revisions to improve the evaluation of costs, which serve as the basis for the present statute, these recommendations provided little guidance on the actual cost components relevant to evaluating the potential impact of a proposed rule.<sup>40</sup>

For example, neither a definition nor examples of “regulatory costs” are found in the APA although the concept is important to an agency’s economic analysis. “Transactional costs” are defined as direct costs of compliance, readily ascertainable based on standard business practices, including:

- Filing fees;
- Costs to obtain a license;
- Costs of equipment installed or used for rule compliance;

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respond to a lower cost regulatory alternative. *RHC and Associates, Inc. v. Hillsborough County School Board*, Final Order, DOAH Case no. 02-3138RP at <http://www.doah.state.fl.us/ALJ/searchDOAH/> (accessed Jan.28, 2014).

<sup>31</sup> Section 120.541(1)(e), F.S. Unlike other failures to follow the APA rulemaking requirements, this provision prevents the challenged agency from rebutting the presumed material failure by proving the substantial interests of the petitioner and the fairness of the proceedings were not impaired. Section 120.56(1)(c), F.S. This limitation applies only if the challenge is brought by a substantially affected person within one year from the rule going into effect. Section 120.541(1)(f), F.S.

<sup>32</sup> Section 120.52(8)(a), F.S.

<sup>33</sup> Section 120.52(8)(f), F.S. This type of challenge must be to the agency’s rejection of a lower cost regulatory alternative and brought by a substantially affected person within a year of the rule going into effect. Section 120.541(1)(g), F.S.

<sup>34</sup> Section 120.541(3), F.S.

<sup>35</sup> Section 120.541(2)(a), F.S.

<sup>36</sup> Section 120.541(3), F.S.

<sup>37</sup> Ch.96-159, s. 11, LOF.

<sup>38</sup> *Final Report of the Governor’s Administrative Procedure Act Review Commission*, 1 (Feb. 20, 1996), at <http://japc.state.fl.us/research.cfm> (accessed 1/29/2014).

<sup>39</sup> *Final Report of the Governor’s APA Review Commission*, supra at 31.

<sup>40</sup> *Final Report of the Governor’s APA Review Commission*, supra at 32.

- Costs of procedures required for compliance;
- Additional operating costs;
- Costs for monitoring and reporting; and
- Any other necessary costs of compliance.<sup>41</sup>

The statute does not provide guidance or reference on how agencies are to identify and apply standard business practices in the development of required SERCs. As a result, some agencies with access to, and familiarity with, cost impact data from entities affected by specific rules provide comprehensive analyses of such impacts in SERCs. Other agencies, less familiar with costs to individuals and entities to conduct the regulated activities and comply with specific rules, prepare SERCs which do not reflect the full impact of particular rules.

### **Creation of Community Development Districts**

Under current law, community development districts larger than 1,000 acres are established by rule under ch. 120, F.S., by the Florida Land and Water Adjudicatory Commission through a petition. The petitioner must provide a SERC related to the establishment of the district.

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

The bill amends the rulemaking procedures of the APA to improve public notices and the preparation of SERCs, beginning in the period of rule development. Agencies must consider specific factors when evaluating the overall impact on small businesses of a proposed rule, amendment, or repeal. When conducting a public workshop or hearing, the agency must make available those personnel responsible for preparing the SERC and those personnel responding to lower cost regulatory alternatives. The statute controlling the actual preparation of SERCs is revised to clarify agency responsibilities for public notice and responding to lower cost regulatory alternatives. A new subsection provides agencies flexibility for obtaining necessary data and increases legislative guidance for evaluating cost impacts by identifying specific cost and economic factors all agencies must consider when preparing a SERC.

### **Revisions to Rulemaking Requirements**

#### ***Section 120.54(2): Rule Development***

The bill conforms the requirement for information in a notice of rule development<sup>42</sup> with that required for a notice of proposed rule.<sup>43</sup> In notices of rule development, agencies will be required to provide:

- Citations to the grant of rulemaking authority and the specific law(s) being implemented or interpreted under which the proposed rule will be developed;
- How the public may access online a draft of the rule being developed (when available) or obtain a hard copy of the preliminary draft; and
- Information on how the public may comment on the proposed rule development and provide the agency with information on regulatory costs which may result from a proposed rule.

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<sup>41</sup> Section 120.541(2)(d), F.S.

<sup>42</sup> Section 120.54(2)(a), F.S.

<sup>43</sup> Section 120.54(3)(a)1., F.S.

Agencies conducting public rule development workshops<sup>44</sup> will be required to ensure the attendance at such workshops not only of the people responsible for preparing the proposed rule but also those responsible for preparing the SERC to receive public input, explain the agency's proposal, how the agency arrived at its estimation of costs, respond to public questions or comments. The bill deletes a sentence stating an agency's failure to provide the agency head's written explanation as to why a requested workshop was not necessary "may be a material error" in the rulemaking procedure because the statement is redundant of s. 120.56(1)(c), F.S.

The bill makes other technical revisions conforming the rule development statute to these changes.

***Section 120.54(3): Rule Adoption***

The bill makes several changes to the requirement for notices of proposed rules:<sup>45</sup>

- Additional information must be included in the published notice of proposed rule.<sup>46</sup>
  - The notice must state whether the agency held a public workshop for rule development. If not, whether the agency received a written request to conduct a workshop.
  - If the agency received a written request but did not conduct a workshop, whether the agency head provided a written explanation as to why the workshop was unnecessary.
  - The required summary of the SERC (if one is prepared) must include a hyperlink to a copy of the SERC on the agency's website.
  - The agency must make all materials referenced in the proposed rule available by hyperlink. If posting the relevant materials would violate federal copyright laws, then the notice must include a statement citing that reason.
- When an agency must deliver additional copies of the published notice of proposed rule to those who requested advance notice of the agency's proceedings,<sup>47</sup> agencies will have the option of providing such copies by mail or electronic delivery.
- In lieu of filing physical copies of a required statement or copy of additional material incorporated by reference in the proposed rule,<sup>48</sup> the agency may provide the Joint Administrative Procedures Committee (JAPC)<sup>49</sup> access to a copy of these materials by hyperlink to a webpage on the agency's website.

The guidance and direction for agencies to consider the impact on small businesses of proposed rules<sup>50</sup> is revised. A rule will be presumed to have an adverse impact, and a SERC will be required, if for any small business:

- The owner or other specified person must complete any education, training or testing, is likely to expend 10 or more hours, or must hire professional services, in order to understand and comply with the rule in the first year.

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<sup>44</sup> Section 120.54(2)(c), F.S.

<sup>45</sup> Section 120.54(3)(a), F.S.

<sup>46</sup> Section 120.54(3)(a)1., F.S.

<sup>47</sup> Section 120.54(3)(a)3., F.S.

<sup>48</sup> Section 120.54(1)(i)1., 2., 3., F.S.

<sup>49</sup> Section 120.54(3)(a)4., F.S.

<sup>50</sup> Section 120.54(3)(b)2.a., F.S. The bill inserts the new provisions as a revised 120.54(3)(b)2.a., renumbering existing (3)(b)2.a. as (3)(b)2.b.



- Taxes or fees assessed on transactions are likely to increase by at least \$500 in the aggregate in one year due to the rule.
- Prices charged for goods and services are restricted or likely to increase due to the rule.
- Compliance with the rule will require specially trained, licensed, or tested employees.
- Operating costs are expected to increase by \$100,000 annually because of the rule.
- Capital expenditures of at least \$1,000 are necessary to comply with the rule.

Consistent with the revised requirements for rule development workshops, agencies will be required to ensure the availability at hearings on proposed rules both of those responsible for preparing the proposed rule and those responsible for preparing the SERC. Those made available must be able to explain the proposed rule and the SERC and respond to public questions or comments about the proposed rule, SERC, and the agency's decision whether to adopt offered lower cost regulatory alternatives.

An agency deciding to commence a requested separate, more formal proceeding<sup>51</sup> will be required to publish notice of that proceeding in the Florida Administrative Register. The bill expressly tolls all timelines under the standard rulemaking procedures during the suspension of the rulemaking proceeding until the date following the conclusion of the separate proceeding.

An agency publishing a notice of change to a proposed rule will be required to include one of the following:

- A summary of the SERC prepared as a consequence of the change to the proposed rule; or
- A summary of the revision to the SERC required by s. 120.541(1)(c), F.S.; or
- A statement the proposed rule as changed does not require preparation of a SERC.

In addition to technical changes conforming other statutory provisions to these changes, the bill requires agencies to make a SERC available to the public at a readily accessible page on the agency's website.<sup>52</sup>

### ***Section 120.541: Statements of Estimated Regulatory Costs***

The bill expressly provides for the submission of lower cost regulatory alternatives in response to any non-technical noticed change to the proposed rule. Submissions of lower cost regulatory alternatives responding to notices of change will only be in good faith if the person submitting the alternative notes the reason for believing the change creates increased regulatory costs or an adverse effect on small businesses that was not created by the original proposed rule.

An agency receiving a proposed lower cost regulatory alternative will now have the choice of modifying the proposed rule to substantially reduce regulatory costs, adopting the alternative proposal, or rejecting the alternative proposal. If the agency rejects the alternative proposal or modifies the proposed rule, then the agency must explain why it has done so.

If so, the agency also must revise the SERC. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response

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<sup>51</sup> Section 120.54(3)(c)2., F.S.

<sup>52</sup> Section 120.54(3)(e)2., F.S.

to a lower cost regulatory alternative, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be served on the rules ombudsman,<sup>53</sup> in addition to the party submitting the lower cost regulatory alternative and JAPC, and must be published in the same manner as the original SERC.

The bill provides that when a rule withdrawn or repealed; or if the rule is amended and accompanied by a new SERC, an agency will publish on the internet the following documents:

- A SERC prepared for a rule proposed or adopted after November 16, 2010;
- A revised SERC for a rule proposed or adopted after November 16, 2010;
- A compliance economic review; and
- An Office of Fiscal Accountability and Regulatory Reform (OFARR) report on the estimated costs.

The bill significantly revises the guidance on which agencies must rely when preparing SERCs. The definition and use of “transactional” costs is replaced with more specific terms.

- The required economic analysis must still analyze the proposed rule’s impact on regulatory costs, which will include all costs and impacts estimated in the SERC.
- The agency must estimate the number of small businesses and other entities required to comply with the proposed rule, in addition to individuals.
- The SERC must estimate the costs of compliance by individuals and entities.
- The bill requires agencies to estimate all impacts and costs for the first five years after full implementation of all provisions of the rule, not simply from the effective date of the proposed rule.
- The bill requires estimates of economic, market and small business impacts likely to result from compliance with the proposed rule and provides specific guidance for agencies to consider elements such as:
  - Increased consumer prices;
  - Decreased market value of goods and services produced, provided or sold;
  - Increased costs due to obtaining substitute or alternative products or services;
  - The value of time expended by business owners and other business personnel to comply with the proposed rule; and
  - Capital costs incurred to comply with the proposed rule.
- The bill provides agencies with specific guidance and flexibility for obtaining information and data necessary to prepare economic analyses.
- The bill directs agencies to consider all direct and indirect costs of rule compliance and provides 18 specific types of costs as examples, including:
  - Filing fees;
  - Costs of obtaining a license;
  - Costs to obtain, install, and maintain equipment necessary for compliance;
  - Costs related to accounting, financial, information, and management systems;
  - Labor costs;
  - Costs of education, training, and testing necessary for compliance; and
  - Allocation of administrative and other overhead.

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<sup>53</sup> The rule ombudsman is appointed by the Governor and located in the Executive Office of the Governor. Section 288.7015, F.S.

With greater specificity on the costs that must be considered in the SERC, there is a likelihood that more rules may exceed the economic analysis thresholds established in s. 120.541(2)(a), F.S., and thus more rules may require legislative ratification. This ratification process may delay implementation of the rule until after the next Regular Session of the Legislature.

#### **Section 190.005 Creation of Community Development Districts**

The bill removes the requirement that the petitioner to establish a community development districts must include a SERC. Instead, the petitioner must provide a statement explaining the prospective economic impact of the establishment of the proposed district.

This bill will take effect on July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

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

B. Private Sector Impact:

The bill is expected to provide better estimation of economic impacts of agency rules, better opportunity for local government and private entities to participate in rulemaking and in estimating regulatory costs with the clear intent to better facilitate the selection of lower cost alternatives. In addition, more complete estimates of regulatory costs and economic impacts may bring more agency rules under the scrutiny of legislative ratification prior to those rules becoming effective.

C. Government Sector Impact:

State agencies currently are required to comply with notice, publication, and hearing requirements for rulemaking and with the requirements for preparing SERCs. The bill

marginally adds to these requirements but specifically provides for electronic and internet provision of many documents that may currently be delivered in paper form.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

With greater specificity on the costs that must be considered in the SERC, there is a likelihood that more rules may exceed the economic analysis thresholds established in s. 120.541(2)(a), F.S., and thus more rules may require legislative ratification. This ratification process may delay implementation of the rule until after the next Regular Session of the Legislature.

**VIII. Statutes Affected:**

This bill substantially amends sections 120.54, 120.541, and 190.005 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 Governmental Oversight and Accountability

585-02151-15

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1 A bill to be entitled  
 2 An act relating to administrative procedures; amending  
 3 s. 120.54, F.S.; revising requirements for the content  
 4 of notices of rule development; revising the scope of  
 5 public workshops to include information gathering for  
 6 the preparation of statements of estimated regulatory  
 7 costs; revising requirements for notices of proposed  
 8 rules; requiring certain materials incorporated by  
 9 reference to be accessible online at time of notice of  
 10 proposed rule; authorizing electronic delivery of  
 11 notices to persons who have requested advance notice  
 12 of agency rulemaking proceedings; revising  
 13 requirements for an agency's filing of specified  
 14 information with the Administrative Procedures  
 15 Committee; creating a presumption of adverse impact on  
 16 small business in specified circumstances; requiring  
 17 certain agency personnel to attend public hearings on  
 18 proposed rules; requiring an agency to publish a  
 19 notice of convening a separate proceeding in certain  
 20 circumstances; tolling rulemaking deadlines during  
 21 such separate proceedings; revising requirements for  
 22 the contents of a notice of change; amending s.  
 23 120.541, F.S.; revising requirements for substantially  
 24 affected persons to submit proposals for lower cost  
 25 regulatory alternatives to a proposed rule following a  
 26 notice of change; revising requirements for an  
 27 agency's consideration of such lower cost regulatory  
 28 alternatives; providing for an agency's revision and  
 29 publication of a revised statement of estimated

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30 regulatory costs in response to such lower cost  
 31 regulatory alternatives; requiring the agency to  
 32 provide specified documents on a website under  
 33 specific circumstances; deleting the definition of the  
 34 term "transactional costs"; providing additional  
 35 requirements for the calculation of estimated  
 36 regulatory costs; amending s. 190.005, F.S.; requiring  
 37 a petition to include a statement explaining the  
 38 prospective economic impact of the establishment of a  
 39 proposed community development district; providing an  
 40 effective date.  
 41  
 42 Be It Enacted by the Legislature of the State of Florida:  
 43  
 44 Section 1. Subsections (2) and (3) of section 120.54,  
 45 Florida Statutes, are amended to read:  
 46 120.54 Rulemaking.—  
 47 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—  
 48 (a) Except when the intended action is the repeal of a  
 49 rule, agencies shall provide notice of the development of  
 50 proposed rules by publication of a notice of rule development in  
 51 the Florida Administrative Register before providing notice of a  
 52 proposed rule as required by paragraph (3) (a). The notice of  
 53 rule development shall indicate the subject area to be addressed  
 54 by rule development, provide a short, plain explanation of the  
 55 purpose and effect of the proposed rule, cite the grant of  
 56 rulemaking authority pursuant to which the rule is proposed and  
 57 the section or subsection of the Florida Statutes or the Laws of  
 58 Florida being implemented or interpreted by the proposed rule

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59 ~~specific legal authority for the proposed rule~~, and include the  
60 preliminary text of the proposed rules, if available, or a  
61 statement of how a person may promptly obtain, without cost, or  
62 access online, a copy of any preliminary draft, if available.  
63 The notice shall also include a statement of how a person may  
64 submit comments to the proposal and provide information  
65 regarding the potential regulatory costs.

66 (b) All rules should be drafted in readable language. The  
67 language is readable if:

68 1. It avoids the use of obscure words and unnecessarily  
69 long or complicated constructions; and

70 2. It avoids the use of unnecessary technical or  
71 specialized language that is understood only by members of  
72 particular trades or professions.

73 (c) An agency may hold public workshops for purposes of  
74 rule development and information gathering for the preparation  
75 of the statement of estimated regulatory costs. If requested in  
76 writing by an affected person, an agency must hold public  
77 workshops, including workshops in various regions of the state  
78 or the agency's service area, for purposes of rule development  
79 and information gathering for the preparation of the statement  
80 of estimated regulatory cost if requested in writing by any  
81 ~~affected person~~, unless the agency head explains in writing why  
82 a workshop is unnecessary. The explanation is not final agency  
83 action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~  
84 ~~failure to provide the explanation when required may be a~~  
85 ~~material error in procedure pursuant to s. 120.56(1)(c).~~ When a  
86 workshop or public hearing is held, the agency must ensure that  
87 the persons responsible for preparing the proposed rule and the

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88 statement of estimated regulatory costs are available to receive  
89 public input, to explain the agency's proposal, and to respond  
90 to questions or comments regarding the rule being developed and  
91 the statement of estimated regulatory costs. The workshop may be  
92 facilitated or mediated by a neutral third person, or the agency  
93 may employ other types of dispute resolution alternatives for  
94 the workshop that are appropriate for rule development,  
95 including the preparation of any statement of estimated  
96 regulatory costs. Notice of a rule development workshop shall be  
97 by publication in the Florida Administrative Register not less  
98 than 14 days before ~~prior to~~ the date on which the workshop is  
99 scheduled to be held and shall indicate the subject area which  
100 will be addressed; the agency contact person; and the place,  
101 date, and time of the workshop.

102 (d)1. An agency may use negotiated rulemaking in developing  
103 and adopting rules. The agency should consider the use of  
104 negotiated rulemaking when complex rules are being drafted or  
105 strong opposition to the rules is anticipated. The agency should  
106 consider, but is not limited to considering, whether a balanced  
107 committee of interested persons who will negotiate in good faith  
108 can be assembled, whether the agency is willing to support the  
109 work of the negotiating committee, and whether the agency can  
110 use the group consensus as the basis for its proposed rule.  
111 Negotiated rulemaking uses a committee of designated  
112 representatives to draft a mutually acceptable proposed rule and  
113 to develop information necessary to prepare a statement of  
114 estimated regulatory costs, when applicable.

115 2. An agency that chooses to use the negotiated rulemaking  
116 process described in this paragraph shall publish in the Florida

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117 Administrative Register a notice of negotiated rulemaking that  
 118 includes a listing of the representative groups that will be  
 119 invited to participate in the negotiated rulemaking process. Any  
 120 person who believes that his or her interest is not adequately  
 121 represented may apply to participate within 30 days after  
 122 publication of the notice. All meetings of the negotiating  
 123 committee shall be noticed and open to the public pursuant to  
 124 the provisions of this chapter. The negotiating committee shall  
 125 be chaired by a neutral facilitator or mediator.

126 3. The agency's decision to use negotiated rulemaking, its  
 127 selection of the representative groups, and approval or denial  
 128 of an application to participate in the negotiated rulemaking  
 129 process are not agency action. Nothing in this subparagraph is  
 130 intended to affect the rights of a substantially ~~an~~ affected  
 131 person to challenge a proposed rule developed under this  
 132 paragraph in accordance with s. 120.56(2).

133 (3) ADOPTION PROCEDURES.—

134 (a) Notices.—

135 1. Before ~~Prior~~ to the adoption, amendment, or repeal of  
 136 any rule other than an emergency rule, an agency, upon approval  
 137 of the agency head, shall give notice of its intended action,  
 138 setting forth a short, plain explanation of the purpose and  
 139 effect of the proposed action; the full text of the proposed  
 140 rule or amendment and a summary thereof; a reference to the  
 141 grant of rulemaking authority pursuant to which the rule is  
 142 adopted; and a reference to the section or subsection of the  
 143 Florida Statutes or the Laws of Florida being implemented or  
 144 interpreted. The notice must include a statement as to whether  
 145 the agency held a public workshop for the purpose of development

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146 of the proposed rule, and if not, whether a workshop was  
 147 requested in writing. If a rule development workshop was not  
 148 held, the notice must include a copy of the written explanation  
 149 from the agency head as to why a workshop was unnecessary. The  
 150 notice must include a summary of the agency's statement of the  
 151 estimated regulatory costs, including an electronic hyperlink to  
 152 a copy of the statement of estimated regulatory costs on the  
 153 agency's website, if a statement ~~one~~ has been prepared, based on  
 154 the factors set forth in s. 120.541(2); a statement that any  
 155 person who wishes to provide the agency with information  
 156 regarding the statement of estimated regulatory costs, or to  
 157 provide a proposal for a lower cost regulatory alternative as  
 158 provided by s. 120.541(1), must do so in writing within 21 days  
 159 after publication of the notice; and a statement as to whether,  
 160 based on the statement of the estimated regulatory costs or  
 161 other information expressly relied upon and described by the  
 162 agency if no statement of regulatory costs is required, the  
 163 proposed rule is expected to require legislative ratification  
 164 pursuant to s. 120.541(3). The notice must state the procedure  
 165 for requesting a public hearing on the proposed rule. Except  
 166 when the intended action is the repeal of a rule, the notice  
 167 must include a reference both to the date on which and to the  
 168 place where the notice of rule development that is required by  
 169 subsection (2) appeared.

170 2. The notice shall be published in the Florida  
 171 Administrative Register at least not less than 28 days before  
 172 ~~prior to~~ the intended action. The proposed rule shall be  
 173 available for inspection and copying by the public at the time  
 174 of the publication of notice. At the time of publication of the

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175 notice, the agency must make available by electronic hyperlink  
 176 all materials incorporated by reference in the proposed rule.  
 177 The notice shall include the electronic hyperlink for access to  
 178 materials incorporated by reference. If the agency determines  
 179 that posting would constitute a violation of federal copyright  
 180 law, the notice must include the statement required in sub-  
 181 paragraph (1)(i)3.b.

182 3. The notice shall be mailed to all persons named in the  
 183 proposed rule and mailed or delivered electronically to all  
 184 persons who, at least 14 days before ~~prior to~~ such mailing, have  
 185 made requests of the agency for advance notice of its  
 186 proceedings. The agency shall also give such notice as is  
 187 prescribed by rule to those particular classes of persons to  
 188 whom the intended action is directed.

189 4. The adopting agency shall file with the committee, at  
 190 least 21 days before ~~prior to~~ the proposed adoption date, a copy  
 191 of each rule it proposes to adopt; a copy of any material  
 192 incorporated by reference in the rule; a detailed written  
 193 statement of the facts and circumstances justifying the proposed  
 194 rule; a copy of any statement of estimated regulatory costs that  
 195 has been prepared pursuant to s. 120.541; a statement of the  
 196 extent to which the proposed rule relates to federal standards  
 197 or rules on the same subject; and the notice required by  
 198 subparagraph 1. In lieu of filing a required statement or copy  
 199 with the committee for each such rule, the agency may file with  
 200 the committee information providing an electronic hyperlink to a  
 201 readily accessible copy of the required statement or copy.

202 (b) *Special matters to be considered in rule adoption.*—

203 1. Statement of estimated regulatory costs.—Before the

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204 adoption, amendment, or repeal of any rule other than an  
 205 emergency rule, an agency is encouraged to prepare a statement  
 206 of estimated regulatory costs of the proposed rule, as provided  
 207 by s. 120.541. However, an agency must prepare a statement of  
 208 estimated regulatory costs of the proposed rule, as provided by  
 209 s. 120.541, if:

210 a. The proposed rule will have an adverse impact on small  
 211 business; or

212 b. The proposed rule is likely to directly or indirectly  
 213 increase regulatory costs in excess of \$200,000 in the aggregate  
 214 in this state within 1 year after the implementation of the  
 215 rule.

216 2. Small businesses, small counties, and small cities.—

217 a. For purposes of this subsection and s. 120.541(2), an  
 218 adverse impact on small business is presumed if, for any small  
 219 business:

220 (I) An owner, officer, operator, or manager must complete  
 221 any education, training, or testing to comply, or is likely to  
 222 either expend 10 hours or purchase professional advice to  
 223 understand and comply with the rule in the first year;

224 (II) Taxes or fees assessed on transactions are likely to  
 225 increase by \$500 or more in the aggregate in 1 year;

226 (III) Prices charged for goods and services are restricted  
 227 or are likely to increase because of the rule;

228 (IV) Specially trained, licensed, or tested employees will  
 229 be required;

230 (V) Operating costs are expected to increase by at least  
 231 \$1,000 annually; or

232 (VI) Capital expenditures in excess of \$1,000 are necessary



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233 to comply with the rule.

234 b. Each agency, before the adoption, amendment, or repeal  
 235 of a rule, shall consider the impact of the rule on small  
 236 businesses as defined by s. 288.703 and the impact of the rule  
 237 on small counties or small cities as defined by s. 120.52.  
 238 Whenever practicable, an agency shall tier its rules to reduce  
 239 disproportionate impacts on small businesses, small counties, or  
 240 small cities to avoid regulating small businesses, small  
 241 counties, or small cities that do not contribute significantly  
 242 to the problem the rule is designed to address. An agency may  
 243 define "small business" to include businesses employing more  
 244 than 200 persons, may define "small county" to include those  
 245 with populations of more than 75,000, and may define "small  
 246 city" to include those with populations of more than 10,000, if  
 247 it finds that such a definition is necessary to adapt a rule to  
 248 the needs and problems of small businesses, small counties, or  
 249 small cities. The agency shall consider each of the following  
 250 methods for reducing the impact of the proposed rule on small  
 251 businesses, small counties, and small cities, or any combination  
 252 of these entities:

253 (I) Establishing less stringent compliance or reporting  
 254 requirements in the rule.

255 (II) Establishing less stringent schedules or deadlines in  
 256 the rule for compliance or reporting requirements.

257 (III) Consolidating or simplifying the rule's compliance or  
 258 reporting requirements.

259 (IV) Establishing performance standards or best management  
 260 practices to replace design or operational standards in the  
 261 rule.

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262 (V) Exempting small businesses, small counties, or small  
 263 cities from any or all requirements of the rule.

264 ~~c.b.~~(I) If the agency determines that the proposed action  
 265 will affect small businesses as defined by the agency as  
 266 provided in sub-subparagraph b. ~~et.~~, the agency shall send  
 267 written notice of the rule to the rules ombudsman in the  
 268 Executive Office of the Governor at least 28 days before the  
 269 intended action.

270 (II) Each agency shall adopt those regulatory alternatives  
 271 offered by the rules ombudsman in the Executive Office of the  
 272 Governor and provided to the agency no later than 21 days after  
 273 the rules ombudsman's receipt of the written notice of the rule  
 274 which it finds are feasible and consistent with the stated  
 275 objectives of the proposed rule and which would reduce the  
 276 impact on small businesses. When regulatory alternatives are  
 277 offered by the rules ombudsman in the Executive Office of the  
 278 Governor, the 90-day period for filing the rule in subparagraph  
 279 (e)2. is extended for a period of 21 days.

280 (III) If an agency does not adopt all alternatives offered  
 281 pursuant to this sub-subparagraph, it shall, before rule  
 282 adoption or amendment and pursuant to subparagraph (d)1., file a  
 283 detailed written statement with the committee explaining the  
 284 reasons for failure to adopt such alternatives. Within 3 working  
 285 days after the filing of such notice, the agency shall send a  
 286 copy of such notice to the rules ombudsman in the Executive  
 287 Office of the Governor.

288 (c) *Hearings.*—

289 1. If the intended action concerns any rule other than one  
 290 relating exclusively to procedure or practice, the agency shall,

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291 on the request of any affected person received within 21 days  
 292 after the date of publication of the notice of intended agency  
 293 action, give affected persons an opportunity to present evidence  
 294 and argument on all issues under consideration. The agency may  
 295 schedule a public hearing on the proposed rule and, if requested  
 296 by any affected person, shall schedule a public hearing on the  
 297 proposed rule. When a public hearing is held, the agency must  
 298 ensure that the persons responsible for preparing the proposed  
 299 rule and the statement of estimated regulatory costs ~~staff~~ are  
 300 available to explain the agency's proposal and to respond to  
 301 questions or comments regarding the proposed rule, the statement  
 302 of estimated regulatory costs, and the agency's decision whether  
 303 to adopt a lower cost regulatory alternative submitted pursuant  
 304 to s. 120.541(1)(a). If the agency head is a board or other  
 305 collegial body created under s. 20.165(4) or s. 20.43(3)(g), and  
 306 one or more requested public hearings is scheduled, the board or  
 307 other collegial body shall conduct at least one of the public  
 308 hearings itself and may not delegate this responsibility without  
 309 the consent of those persons requesting the public hearing. Any  
 310 material pertinent to the issues under consideration submitted  
 311 to the agency within 21 days after the date of publication of  
 312 the notice or submitted to the agency between the date of  
 313 publication of the notice and the end of the final public  
 314 hearing shall be considered by the agency and made a part of the  
 315 record of the rulemaking proceeding.

316 2. Rulemaking proceedings shall be governed solely by the  
 317 provisions of this section unless a person timely asserts that  
 318 the person's substantial interests will be affected in the  
 319 proceeding and affirmatively demonstrates to the agency that the

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320 proceeding does not provide adequate opportunity to protect  
 321 those interests. If the agency determines that the rulemaking  
 322 proceeding is not adequate to protect the person's interests, it  
 323 shall suspend the rulemaking proceeding and convene a separate  
 324 proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The  
 325 agency shall publish notice of convening a separate proceeding  
 326 in the Florida Administrative Register. Similarly situated  
 327 persons may be requested to join and participate in the separate  
 328 proceeding. Upon conclusion of the separate proceeding, the  
 329 rulemaking proceeding shall be resumed. All timelines in this  
 330 section are tolled during any suspension of the rulemaking  
 331 proceeding under this subparagraph, beginning on the date that  
 332 the notice of convening a separate proceeding is published and  
 333 resuming on the day immediately after conclusion of the separate  
 334 proceeding.

335 (d) *Modification or withdrawal of proposed rules.*—

336 1. After the final public hearing on the proposed rule, or  
 337 after the time for requesting a hearing has expired, if the  
 338 proposed rule has not been changed from the proposed rule as  
 339 previously filed with the committee, or contains only technical  
 340 changes that do not affect the substance of the rule, the  
 341 adopting agency shall file a notice to that effect with the  
 342 committee at least 7 days ~~before~~ ~~prior to~~ filing the rule for  
 343 adoption. Any change, other than a technical change ~~that does~~  
 344 ~~not affect the substance of the rule~~, must be supported by the  
 345 record of public hearings held on the proposed rule, must be in  
 346 response to written material submitted to the agency within 21  
 347 days after the date of publication of the notice of intended  
 348 agency action or submitted to the agency between the date of

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349 publication of the notice and the end of the final public  
 350 hearing, or must be in response to a proposed objection by the  
 351 committee. In addition, when any change is made in a proposed  
 352 rule, other than a technical change, the adopting agency shall  
 353 provide a copy of a notice of change by certified mail or actual  
 354 delivery to any person who requests it in writing no later than  
 355 21 days after the notice required in paragraph (a). The agency  
 356 shall file the notice of change with the committee, along with  
 357 the reasons for the change, and provide the notice of change to  
 358 persons requesting it, at least 21 days before ~~prior to~~ filing  
 359 the rule for adoption. The notice of change shall be published  
 360 in the Florida Administrative Register at least 21 days before  
 361 ~~prior to~~ filing the rule for adoption. The notice of change must  
 362 include either a summary of any statement of estimated  
 363 regulatory costs prepared as a consequence of the change, a  
 364 summary of any revision of the statement of estimated regulatory  
 365 costs required by s. 120.541(1)(c), or a statement that the  
 366 proposed rule as changed does not require preparation of a  
 367 statement of estimated regulatory costs under paragraph (b) and  
 368 s. 120.541(1)(b). This subparagraph does not apply to emergency  
 369 rules adopted pursuant to subsection (4).

370 2. After the notice required by paragraph (a) and before  
 371 ~~prior to~~ adoption, the agency may withdraw the proposed rule in  
 372 whole or in part.

373 3. After adoption and before the rule becomes effective, a  
 374 rule may be modified or withdrawn only in the following  
 375 circumstances:

- 376 a. When the committee objects to the rule;
- 377 b. When a final order, which is not subject to further

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378 appeal, is entered in a rule challenge brought pursuant to s.  
 379 120.56 after the date of adoption but before the rule becomes  
 380 effective pursuant to subparagraph (e)6.;

381 c. If the rule requires ratification, when more than 90  
 382 days have passed since the rule was filed for adoption without  
 383 the Legislature ratifying the rule, in which case the rule may  
 384 be withdrawn but may not be modified; or

385 d. When the committee notifies the agency that an objection  
 386 to the rule is being considered, in which case the rule may be  
 387 modified to extend the effective date by not more than 60 days.

388 4. The agency shall give notice of its decision to withdraw  
 389 or modify a rule in the first available issue of the publication  
 390 in which the original notice of rulemaking was published, shall  
 391 notify those persons described in subparagraph (a)3. in  
 392 accordance with the requirements of that subparagraph, and shall  
 393 notify the Department of State if the rule is required to be  
 394 filed with the Department of State.

395 5. After a rule has become effective, it may be repealed or  
 396 amended only through the rulemaking procedures specified in this  
 397 chapter.

398 (e) *Filing for final adoption; effective date.*—

399 1. If the adopting agency is required to publish its rules  
 400 in the Florida Administrative Code, the agency, upon approval of  
 401 the agency head, shall file with the Department of State three  
 402 certified copies of the rule it proposes to adopt; one copy of  
 403 any material incorporated by reference in the rule, certified by  
 404 the agency; a summary of the rule; a summary of any hearings  
 405 held on the rule; and a detailed written statement of the facts  
 406 and circumstances justifying the rule. Agencies not required to

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407 publish their rules in the Florida Administrative Code shall  
 408 file one certified copy of the proposed rule, and the other  
 409 material required by this subparagraph, in the office of the  
 410 agency head, and such rules shall be open to the public.

411 2. A rule may not be filed for adoption less than 28 days  
 412 or more than 90 days after the notice required by paragraph (a),  
 413 until 21 days after the notice of change required by paragraph  
 414 (d), until 14 days after the final public hearing, until 21 days  
 415 after a statement of estimated regulatory costs required under  
 416 s. 120.541 has been provided to all persons who submitted a  
 417 lower cost regulatory alternative and made available to the  
 418 public at a readily accessible page on the agency's website, or  
 419 until the administrative law judge has rendered a decision under  
 420 s. 120.56(2), whichever applies. When a required notice of  
 421 change is published before ~~prior to~~ the expiration of the time  
 422 to file the rule for adoption, the period during which a rule  
 423 must be filed for adoption is extended to 45 days after the date  
 424 of publication. If notice of a public hearing is published  
 425 before ~~prior to~~ the expiration of the time to file the rule for  
 426 adoption, the period during which a rule must be filed for  
 427 adoption is extended to 45 days after adjournment of the final  
 428 hearing on the rule, 21 days after receipt of all material  
 429 authorized to be submitted at the hearing, or 21 days after  
 430 receipt of the transcript, if one is made, whichever is latest.  
 431 The term "public hearing" includes any public meeting held by  
 432 any agency at which the rule is considered. If a petition for an  
 433 administrative determination under s. 120.56(2) is filed, the  
 434 period during which a rule must be filed for adoption is  
 435 extended to 60 days after the administrative law judge files the

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436 final order with the clerk or until 60 days after subsequent  
 437 judicial review is complete.

438 3. At the time a rule is filed, the agency shall certify  
 439 that the time limitations prescribed by this paragraph have been  
 440 complied with, that all statutory rulemaking requirements have  
 441 been met, and that there is no administrative determination  
 442 pending on the rule.

443 4. At the time a rule is filed, the committee shall certify  
 444 whether the agency has responded in writing to all material and  
 445 timely written comments or written inquiries made on behalf of  
 446 the committee. The Department of State shall reject any rule  
 447 that is not filed within the prescribed time limits; that does  
 448 not comply with all statutory rulemaking requirements and rules  
 449 of the Department of State; upon which an agency has not  
 450 responded in writing to all material and timely written  
 451 inquiries or written comments; upon which an administrative  
 452 determination is pending; or which does not include a statement  
 453 of estimated regulatory costs, if required.

454 5. If a rule has not been adopted within the time limits  
 455 imposed by this paragraph or has not been adopted in compliance  
 456 with all statutory rulemaking requirements, the agency proposing  
 457 the rule shall withdraw the proposed rule and give notice of its  
 458 action in the next available issue of the Florida Administrative  
 459 Register.

460 6. The proposed rule shall be adopted on being filed with  
 461 the Department of State and become effective 20 days after being  
 462 filed, on a later date specified in the notice required by  
 463 subparagraph (a)1., on a date required by statute, or upon  
 464 ratification by the Legislature pursuant to s. 120.541(3). Rules

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465 not required to be filed with the Department of State shall  
 466 become effective when adopted by the agency head, on a later  
 467 date specified by rule or statute, or upon ratification by the  
 468 Legislature pursuant to s. 120.541(3). If the committee notifies  
 469 an agency that an objection to a rule is being considered, the  
 470 agency may postpone the adoption of the rule to accommodate  
 471 review of the rule by the committee. When an agency postpones  
 472 adoption of a rule to accommodate review by the committee, the  
 473 90-day period for filing the rule is tolled until the committee  
 474 notifies the agency that it has completed its review of the  
 475 rule.

477 For the purposes of this paragraph, the term "administrative  
 478 determination" does not include subsequent judicial review.

479 Section 2. Section 120.541, Florida Statutes, is amended to  
 480 read:

481 120.541 Statement of estimated regulatory costs.—

482 (1) (a) Within 21 days after publication of the notice of  
 483 proposed rule required under s. 120.54(3) (a), or of a notice of  
 484 change under s. 120.54(3) (d)1., a substantially affected person  
 485 may submit to an agency a good faith written proposal for a  
 486 lower cost regulatory alternative to a proposed rule which  
 487 substantially accomplishes the objectives of the law being  
 488 implemented. The proposal may include the alternative of not  
 489 adopting any rule if the proposal explains how the lower costs  
 490 and objectives of the law will be achieved by not adopting any  
 491 rule. If submitted after a notice of change, a proposal is  
 492 deemed to be made in good faith only if the person reasonably  
 493 believes and the proposal states the person's reasons for

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494 believing that the proposed rule as changed by the notice of  
 495 change increases the regulatory costs or creates an adverse  
 496 impact on small business that was not created by the previous  
 497 proposal. If ~~such~~ a proposal is submitted, the 90-day period for  
 498 filing the rule is extended 21 days. Upon the submission of the  
 499 lower cost regulatory alternative, the agency shall prepare a  
 500 statement of estimated regulatory costs as provided in  
 501 subsection (2), or shall revise its prior statement of estimated  
 502 regulatory costs, and either adopt the alternative proposal,  
 503 reject the alternative proposal, or modify the proposed rule to  
 504 substantially reduce the regulatory costs. If the agency rejects  
 505 the alternative proposal or modifies the proposed rule, the  
 506 agency shall ~~or~~ provide a statement of the reasons for rejecting  
 507 the alternative proposal in favor of the proposed or modified  
 508 rule.

509 (b) If a proposed rule will have an adverse impact on small  
 510 business as set forth in s. 120.54(3) (b) or if the proposed rule  
 511 is likely to directly or indirectly increase regulatory costs in  
 512 excess of \$200,000 in the aggregate within 1 year after the  
 513 implementation of the rule, the agency shall prepare a statement  
 514 of estimated regulatory costs as required by s. 120.54(3) (b).

515 (c) The agency shall revise a statement of estimated  
 516 regulatory costs if any change to the rule made under s.  
 517 120.54(3) (d) increases the regulatory costs of the rule or if  
 518 the rule is modified in response to the submission of a lower  
 519 cost regulatory alternative. A summary of the revised statement  
 520 must be included with any subsequent notice published under s.  
 521 120.54(3).

522 (d) At least 21 days before filing the rule for adoption,

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523 an agency that is required to revise a statement of estimated  
 524 regulatory costs shall provide the statement to the person who  
 525 submitted the lower cost regulatory alternative, to the rules  
 526 ombudsman in the Executive Office of the Governor, and to the  
 527 committee. The revised statement shall be published and made  
 528 available in the same manner as the original statement of  
 529 estimated regulatory costs and shall provide notice on the  
 530 agency's website that it is available to the public.

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

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

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

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

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

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

550 2. The challenge is to the agency's rejection of a lower  
 551 cost regulatory alternative offered under paragraph (a) or s.

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552 120.54(3)(b)2.c. s. 120.54(3)(b)2.b.; and

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

555 (h) Any of the following documents prepared by or on behalf  
 556 of an agency shall be publicly available on the agency's  
 557 website, or on another state website established for publication  
 558 of administrative law records, until the rule to which the  
 559 document applies is withdrawn or repealed, or until the rule is  
 560 amended and accompanied by the preparation of a new statement of  
 561 estimated regulatory costs:

562 1. A statement of estimated regulatory costs prepared with  
 563 respect to a rule proposed or filed for adoption after November  
 564 16, 2010;

565 2. A revision of a statement of estimated regulatory costs  
 566 prepared with respect to a rule proposed or filed for adoption  
 567 after November 16, 2010;

568 3. A compliance economic review published pursuant to s.  
 569 120.745(5); or

570 4. A report on an economic estimate of regulatory costs and  
 571 economic impact published pursuant to s. 120.745(9)(b).

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

574 (a) An economic analysis showing whether the rule directly  
 575 or indirectly:

576 1. Is likely to have an adverse impact on economic growth,  
 577 private sector job creation or employment, or private sector  
 578 investment in excess of \$1 million in the aggregate within 5  
 579 years after the implementation of the rule;

580 2. Is likely to have an adverse impact on business

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581 competitiveness, including the ability of persons doing business  
582 in the state to compete with persons doing business in other  
583 states or domestic markets, productivity, or innovation in  
584 excess of \$1 million in the aggregate within 5 years after the  
585 implementation of the rule; or

586 3. Is likely to increase regulatory costs, including all  
587 ~~any transactional costs and impacts estimated in the statement,~~  
588 in excess of \$1 million in the aggregate within 5 years after  
589 the implementation of the rule.

590 (b) A good faith estimate of the number of individuals,  
591 small businesses, and other entities likely to be required to  
592 comply with the rule, together with a general description of the  
593 types of individuals likely to be affected by the rule.

594 (c) A good faith estimate of the cost to the agency, and to  
595 any other state and local government entities, of implementing  
596 and enforcing the proposed rule, and any anticipated effect on  
597 state or local revenues.

598 (d) A good faith estimate of the compliance ~~transactional~~  
599 costs likely to be incurred by individuals and entities,  
600 including local government entities, required to comply with the  
601 requirements of the rule. ~~As used in this section,~~  
602 ~~"transactional costs" are direct costs that are readily~~  
603 ~~ascertainable based upon standard business practices, and~~  
604 ~~include filing fees, the cost of obtaining a license, the cost~~  
605 ~~of equipment required to be installed or used or procedures~~  
606 ~~required to be employed in complying with the rule, additional~~  
607 ~~operating costs incurred, the cost of monitoring and reporting,~~  
608 ~~and any other costs necessary to comply with the rule.~~

609 (e) An analysis of the impact on small businesses as

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610 defined by s. 288.703, and an analysis of the impact on small  
611 counties and small cities as defined in s. 120.52. The impact  
612 analysis for small businesses must include the basis for the  
613 agency's decision not to implement alternatives that would  
614 reduce adverse impacts on small businesses.

615 (f) Any additional information that the agency determines  
616 may be useful.

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

622 (3) If the adverse impact or regulatory costs of the rule  
623 exceed any of the criteria established in paragraph (2) (a), the  
624 rule shall be submitted to the President of the Senate and  
625 Speaker of the House of Representatives no later than 30 days  
626 before ~~prior to~~ the next regular legislative session, and the  
627 rule may not take effect until it is ratified by the  
628 Legislature.

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

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

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

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

635 (5) (a) For purposes of subsections (2) and (3), impacts and  
636 costs incurred within 5 years after implementation of the rule  
637 shall include the applicable costs and impacts estimated to be  
638 incurred within the first 5 years after the effective date of

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639 the rule. However, if any provisions of the rule are not fully  
 640 implemented and enforceable upon the effective date of the rule,  
 641 the impacts and costs must be adjusted to include any additional  
 642 costs and impacts estimated to be incurred within 5 years after  
 643 the implementation and enforcement of the provisions of the rule  
 644 that were not fully implemented upon the effective date of the  
 645 rule.

646 (b) In evaluating the impacts described in paragraphs  
 647 (2) (a) and (2) (e), an agency shall include good faith estimates  
 648 of market impacts likely to result from compliance with the  
 649 rule, including:

650 1. Increased customer charges for goods and services.  
 651 2. Decreased market value of goods and services produced,  
 652 provided, or sold.

653 3. Increased costs resulting from the purchase of  
 654 substitute or alternative products or services.

655 4. The reasonable value of time to be expended by owners,  
 656 officers, operators, and managers to understand and comply,  
 657 including, but not limited to, time expended to complete  
 658 required education, training, or testing.

659 5. Capital costs.

660 6. Any other impacts suggested by the rules ombudsman, the  
 661 agency head's appointing authority, or interested persons.

662 (c) In estimating the information required in paragraphs  
 663 (2) (b)-(e), the agency may use reasonably applicable surveys of  
 664 individuals, businesses, business organizations and  
 665 representatives, cities, and counties to collect data helpful to  
 666 estimate the costs and impacts. The agency shall also solicit  
 667 helpful information in each notice related to the proposed rule.

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668 The rules ombudsman and the committee may recommend survey  
 669 instruments and methods to assist agencies in administering this  
 670 section. Such recommendations and agency decisions regarding  
 671 surveys and methods do not constitute rules or agency actions  
 672 under this chapter.

673 (d) In estimating compliance costs under paragraph (2) (d),  
 674 the agency shall consider, among other matters, all direct and  
 675 indirect costs necessary to comply with the rule that are  
 676 readily ascertainable based upon standard business practices,  
 677 including, but not limited to, costs related to:

678 1. Filing fees.

679 2. Obtaining a license.

680 3. Necessary equipment.

681 4. Installation, utilities, and maintenance of necessary  
 682 equipment.

683 5. Necessary operations and procedures.

684 6. Accounting, financial, information and management  
 685 systems, and other administrative processes.

686 7. Other processes.

687 8. Labor based on relevant rates of wages, salaries and  
 688 benefits.

689 9. Materials and supplies.

690 10. Capital expenditures including financing costs.

691 11. Professional and technical services, including  
 692 contracted services necessary to implement and maintain  
 693 compliance.

694 12. Monitoring and reporting.

695 13. Qualifying and recurring education, training, and  
 696 testing.

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697 14. Travel.698 15. Insurance and surety requirements.699 16. A fair and reasonable allocation of administrative  
700 costs and other overhead.701 17. Reduced sales or other revenues.702 18. Other items suggested by the rules ombudsman, the  
703 committee, or any interested person, business organization, or  
704 business representative.705 Section 3. Paragraph (a) of subsection (1) of section  
706 190.005, Florida Statutes, is amended to read:

707 190.005 Establishment of district.-

708 (1) The exclusive and uniform method for the establishment  
709 of a community development district with a size of 1,000 acres  
710 or more shall be pursuant to a rule, adopted under chapter 120  
711 by the Florida Land and Water Adjudicatory Commission, granting  
712 a petition for the establishment of a community development  
713 district.714 (a) A petition for the establishment of a community  
715 development district shall be filed by the petitioner with the  
716 Florida Land and Water Adjudicatory Commission. The petition  
717 shall contain:718 1. A metes and bounds description of the external  
719 boundaries of the district. Any real property within the  
720 external boundaries of the district which is to be excluded from  
721 the district shall be specifically described, and the last known  
722 address of all owners of such real property shall be listed. The  
723 petition shall also address the impact of the proposed district  
724 on any real property within the external boundaries of the  
725 district which is to be excluded from the district.

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

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726 2. The written consent to the establishment of the district  
727 by all landowners whose real property is to be included in the  
728 district or documentation demonstrating that the petitioner has  
729 control by deed, trust agreement, contract, or option of 100  
730 percent of the real property to be included in the district, and  
731 when real property to be included in the district is owned by a  
732 governmental entity and subject to a ground lease as described  
733 in s. 190.003(14), the written consent by such governmental  
734 entity.735 3. A designation of five persons to be the initial members  
736 of the board of supervisors, who shall serve in that office  
737 until replaced by elected members as provided in s. 190.006.

738 4. The proposed name of the district.

739 5. A map of the proposed district showing current major  
740 trunk water mains and sewer interceptors and outfalls if in  
741 existence.742 6. Based upon available data, the proposed timetable for  
743 construction of the district services and the estimated cost of  
744 constructing the proposed services. These estimates shall be  
745 submitted in good faith but are not binding and may be subject  
746 to change.747 7. A designation of the future general distribution,  
748 location, and extent of public and private uses of land proposed  
749 for the area within the district by the future land use plan  
750 element of the effective local government comprehensive plan of  
751 which all mandatory elements have been adopted by the applicable  
752 general-purpose local government in compliance with the  
753 Community Planning Act.754 8. A statement explaining the prospective economic impact

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755 of establishment of the proposed district of estimated  
756 ~~regulatory costs in accordance with the requirements of s.~~  
757 ~~120.541.~~

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ALAN HAYS**

11th District

March 19, 2015

The Honorable Jeremy Ring  
405 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Ring,

I respectfully request to be excused from the Governmental Oversight and Accountability meeting on Monday, March 23, 2015. Due to a prior commitment in the district, I will not be able to attend the meeting.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD

**COMMITTEES:**

Appropriations Subcommittee on General Government, *Chair*  
Governmental Oversight and Accountability, *Vice Chair*  
Appropriations  
Environmental Preservation and Conservation  
Ethics and Elections  
Fiscal Policy

**JOINT COMMITTEE:**

Joint Select Committee on Collective Bargaining, *Alternating Chair*

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 401  
**Caption:** Senate Governmental Oversight and Accountability

**Case:**

**Type:**  
**Judge:**

**Started:** 3/23/2015 1:32:47 PM

**Ends:** 3/23/2015 2:41:29 PM

**Length:** 01:08:43

1:32:53 PM Allison calls the roll  
1:32:57 PM Senator Ring begins meeting  
1:33:10 PM Senator Ring begins Tab 1  
1:33:25 PM Senator Ring calls witness to speak  
1:35:43 PM Secretary Detzner is speaking  
1:40:10 PM Senator Ring asks for questions  
1:40:17 PM Senator Bullard asking Secretary Detzner a question  
1:40:39 PM Senator Bullard speaking  
1:41:05 PM Senator Bullard asks Secretary Detzner a question  
1:41:17 PM Secretary Detzner responds to Senator Bullard's question  
1:41:51 PM Secretary Detzner speaking  
1:42:26 PM Senator Bullard responds to Secretary Detzner  
1:42:43 PM Senator Bullard speaking  
1:43:03 PM Senator Bullard asks Secretary Detzner a question  
1:43:13 PM Secretary Detzner responds to Senator Bullard's question  
1:43:39 PM Secretary Detzner speaking  
1:46:09 PM Senator Bullard speaking  
1:47:28 PM Senator Ring addressing Secretary Detzner  
1:47:47 PM Senator Ring asks Secretary Detzner a question  
1:48:07 PM Secretary Detzner answers Senator Ring's question  
1:48:57 PM Senator Ring asks a question  
1:49:28 PM Secretary Detzner responds to Senator Ring's question  
1:50:22 PM Senator Ring asks Secretary Detzner a question  
1:51:25 PM Secretary Detzner responds to Senator Ring  
1:53:06 PM Senator Ring responds to Secretary Detzner  
1:53:23 PM Senator Ring asks a question  
1:53:31 PM Secretary Detzner responds  
1:57:13 PM Senator Ring calls upon Senator Latvala to ask a question  
1:57:28 PM Senator Latvala asks Secretary Detzner a question  
1:58:34 PM Secretary Detzner responds to question  
1:58:53 PM Senator Latvala speaking to Secretary Detzner  
1:59:35 PM Senator Ring asks for Secretary Detzner's closing remarks  
2:00:06 PM Secretary Detzner- Closing remarks  
2:00:46 PM Senator asks Allison to call roll  
2:00:58 PM Allison calls roll  
2:01:20 PM SB 220  
2:01:29 PM Keaton Alexander presents SB 220  
2:02:08 PM Amendment Barcode 379092  
2:02:31 PM Senator Latvala asks a questions  
2:02:48 PM Keaton Alexander speaking  
2:02:58 PM Senator Latvala speaking  
2:05:28 PM Senator Ring calls Senator Bullard to speak  
2:05:36 PM Senator Bullard speaking  
2:07:27 PM Senator Latvala speaking  
2:07:59 PM Lance Pierce waives in support  
2:08:11 PM Jim Spratt waives in support  
2:08:15 PM Senator Ring asks Allison to call roll  
2:08:22 PM Allison Calls roll  
2:08:26 PM SB 220 reports favorably  
2:08:34 PM SB 1446  
2:08:49 PM Michael Nacheff presents SB 1446  
2:08:58 PM Amendment Barcode 457272

2:09:11 PM Mr. Nachef explains the amendment  
2:09:47 PM Amendment Adopted  
2:09:54 PM Jonathan Reeves waive in support  
2:10:07 PM Lster Abberger waive in support  
2:10:20 PM Allison calls the roll  
2:10:23 PM SB 1446 votes favorably  
2:10:33 PM Trent Phillips presents SB 7040  
2:10:55 PM Amendment Barcode 407984  
2:11:05 PM Amendment Adopted  
2:11:15 PM Senator Ring asks Allison to call the roll  
2:11:28 PM SB 7040 votes favorably  
2:11:33 PM Senator Ring asks Senator Latvala to explain SB 1304  
2:11:45 PM Amendment Barcode 379386  
2:11:58 PM Senator Latvala explains the bill  
2:14:41 PM Senator Ring speaking  
2:14:47 PM Motion to adopt amendment  
2:14:58 PM Senator Ring asks Allison to call roll on 1304  
2:15:14 PM SB 1304 reports favorably  
2:16:05 PM Jason Allison speaking  
2:27:37 PM Senator Ring asks for questions  
2:28:37 PM Senator Ring speaking  
2:29:00 PM Jason Allison responding to Senator Ring's question  
2:29:15 PM Senator Ring asks a question  
2:29:23 PM Jason Allison responds to question  
2:30:11 PM Senator Ring asks Mr. Allison a question  
2:32:28 PM Jason Allison speaking  
2:32:38 PM Senator Ring asks questions  
2:33:35 PM Jason Allison responds to questions  
2:35:56 PM Senator Ring asks Jason Allison a final question  
2:36:08 PM Jason Allison responds to questions  
2:38:42 PM Senator Ring asks for questions  
2:38:47 PM Senator Ring asks Senator Legg to chair  
2:39:11 PM Senator Ring presents the bill SPB 7056  
2:39:21 PM Senator Legg asks for questions  
2:39:33 PM No questions  
2:39:39 PM Senator Legg states amendment is adopted  
2:39:52 PM SB 7056 reported favorably  
2:40:01 PM Senator Ring presents bill SPB 7058  
2:40:21 PM Senator Legg asks for questions  
2:40:28 PM Senator Ring waives close  
2:40:37 PM Allison calls roll  
2:40:42 PM SB 7058 reports favorably  
2:40:52 PM Senator Bullard speaking  
2:41:16 PM Senator Ring adjourns meeting