

Tab 1	SB 424 by Gibson ; (Identical to H 00261) Public Records and Public Meetings/Elder Abuse Fatality Review Team				
900002	A	S	RCS	GO, Gibson	Delete everything after 01/10 11:17 AM
Tab 2	SB 560 by Steube ; (Similar to H 00439) Public Meetings and Records/ Imminent Litigation				
Tab 3	SB 608 by Passidomo ; Public Records/Identity Theft and Fraud Protection Act				
Tab 4	SB 750 by Perry ; (Identical to H 00273) Public Records				
Tab 5	SB 826 by Hukill ; (Similar to H 01345) Taxpayers' Rights Advocate				
348024	D	S	RCS	GO, Hukill	Delete everything after 01/10 11:18 AM
Tab 6	SB 950 by Mayfield ; (Similar to H 00651) State Employment				
Tab 7	SB 7000 by CJ ; (Similar to H 07029) OGSR/Criminal History Records/Department of Law Enforcement				
Tab 8	SB 7002 by CJ ; (Identical to H 07031) OGSR/Active Criminal Intelligence or Criminal Investigative Information				
Tab 9	SB 7008 by CU ; OGSR/Local Government Electric Utility				
Tab 10	SPB 7014 by GO ; State-administered Retirement Systems				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Baxley, Chair
Senator Mayfield, Vice Chair

MEETING DATE: Wednesday, January 10, 2018

TIME: 9:00—10:30 a.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Mayfield, Vice Chair; Senators Galvano, Rader, Rouson, Stargel, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 424 Gibson (Identical H 261, Compare H 259, Linked S 422)	Public Records and Public Meetings/Elder Abuse Fatality Review Team; Specifying that information obtained by an elder abuse fatality review team which is confidential or exempt from public records requirements retains its protected status; providing an exemption from public meetings requirements for portions of review team meetings at which confidential or exempt information or the identity of an elder abuse victim is discussed; providing for future legislative review and repeal; providing statements of public necessity, etc. CF 11/13/2017 Favorable GO 01/10/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0
2	SB 560 Steube (Similar H 439)	Public Meetings and Records/ Imminent Litigation ; Expanding an exemption from public meetings requirements to allow specified entities to meet in private with an attorney to discuss imminent litigation if certain conditions are met; requiring the transcript of a private meeting concerning imminent litigation to be made public upon the occurrence of a certain circumstance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 11/14/2017 Favorable GO 01/10/2018 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 608 Passidomo	Public Records/Identity Theft and Fraud Protection Act; Citing this act as the "Identity Theft and Fraud Protection Act"; requiring an agency to review for information susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website; requiring an agency to establish a policy providing for requests to remove an image or a copy of a public record containing information susceptible to use for purposes of identity theft and fraud, etc. GO 01/10/2018 Favorable JU RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, January 10, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 750 Perry (Identical H 273)	Public Records; Prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request, etc. GO 01/10/2018 Favorable JU RC	Favorable Yeas 5 Nays 1
5	SB 826 Hukill (Similar H 1345)	Taxpayers' Rights Advocate; Revising the supervisory authority over the taxpayers' rights advocate within the Department of Revenue; providing that the taxpayers' rights advocate may be removed from office only by the Chief Inspector General for cause, etc. GO 01/10/2018 Fav/CS AFT RC	Fav/CS Yeas 6 Nays 0
6	SB 950 Mayfield (Similar H 651)	State Employment; Repealing provisions relating to the Florida State Employees' Charitable Campaign; prohibiting an organization, an entity, or a person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times, etc. GO 01/10/2018 Favorable AGG AP	Favorable Yeas 6 Nays 0
7	SB 7000 Criminal Justice	OGSR/Criminal History Records/Department of Law Enforcement; Amending provisions relating to an exemption from public records requirements for certain criminal history records ordered expunged which are retained by the Department of Law Enforcement; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 01/10/2018 Favorable RC	Favorable Yeas 6 Nays 0
8	SB 7002 Criminal Justice	OGSR/Active Criminal Intelligence or Criminal Investigative Information; Amending provisions which provides an exemption from public meetings requirements for portions of a meeting of a duly constituted criminal justice commission at which active criminal intelligence information or active criminal investigative information being considered by, or which may foreseeably come before, the commission is discussed; removing the scheduled repeal of the exemption, etc. GO 01/10/2018 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, January 10, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 7008 Communications, Energy, and Public Utilities	OGSR/Local Government Electric Utility; Amending provisions relating to an exemption from public records requirements for proprietary confidential business information held by a local government electric utility; removing the scheduled repeal of the exemption, etc. GO 01/10/2018 Favorable RC	Favorable Yeas 6 Nays 0
Consideration of proposed bill:			
10	SPB 7014	State-administered Retirement Systems; Revising required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 424

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gibson

SUBJECT: Public Records and Public Meetings/Elder Abuse Fatality Review Team

DATE: January 10, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.	Peacock	Caldwell	GO	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 424 creates a public records exemption for certain information obtained by an elder abuse fatality review team as authorized by SB 422. This includes information contained in a record created by an elder abuse fatality review team that reveals the identity of a victim of elder abuse. The bill exempts from public meetings requirements those portions of a meeting that would reveal information that is made confidential and exempt by this bill.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effective date is contingent upon, and concurrent with, passage of SB 422, which will take effect on July 1, 2018.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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 Law

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

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” 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.”

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

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁵ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁶ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁷

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law”¹⁸ or the “Sunshine Law,”¹⁹ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²⁰ The board or commission must provide the public reasonable notice of such meetings.²¹ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²² Minutes of a public meeting must be promptly recorded and open to public inspection.²³ Failure to abide by open meetings requirements will invalidate any resolution, rule,

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ 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).

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

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ *Id.*

¹⁷ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁸ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁹ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²⁰ Section 286.011(1)-(2), F.S.

²¹ *Id.*

²² Section 286.011(6), F.S.

²³ Section 286.011(2), F.S.

or formal action adopted at a meeting.²⁴ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁵

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.²⁶ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁷ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.²⁹ 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.³⁰ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³¹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³²
- 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;³³ or
- It protects trade or business secrets.³⁴

The OGSR also requires specified questions to be considered during the review process.³⁵ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

²⁴ Section 286.011(1), F.S.

²⁵ Section 286.011(3), F.S.

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *Id.*

²⁸ *See supra* note 12.

²⁹ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

³⁰ Section 119.15(3), F.S.

³¹ Section 119.15(6)(b), F.S.

³² Section 119.15(6)(b)1., F.S.

³³ Section 119.15(6)(b)2., F.S.

³⁴ Section 119.15(6)(b)3., F.S.

³⁵ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.³⁶ 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 otherwise provided for by law.³⁷

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 415.1103, F.S., to provide that any information that is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution that is obtained by an elder abuse fatality review team conducting a review retains its confidential or exempt status when held by the review team. The bill creates a public records exemption for information contained in a record created by an elder abuse fatality review team which reveals the identity of a victim of elder abuse as authorized in SB 422.

This section also provides that portions of meetings of a review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The exemption is subject to the OGSR and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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.

Section 2 of the bill provides a statement of public necessity as required by the Florida Constitution. It states that without the exemption, sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination between the parties involved in the elder abuse fatality review would be hampered.

The Legislature further finds that it is a public necessity that portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. The failure to close public meetings at which confidential or exempt information or the identity of the victim of elder abuse are discussed would defeat the purpose of the public records 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?

³⁶ FLA. CONST., art. I, s. 24(c).

³⁷ Section 119.15(7), F.S.

The elder abuse fatality review teams would have access to review confidential records, including possible information gathered in a criminal investigation, in order to carry out their duties. In Chapter 2000-219, Laws of Florida, the Legislature found, in the creation of domestic violence fatality review teams, that sensitive information concerning victims and family members would be discussed at team meetings and the harm that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.³⁸ Additionally, the Legislature found that proceedings and meetings of any domestic violence fatality review team regarding domestic violence fatalities and their prevention during which the identity of the victim is discussed are exempt from s. 286.011, F.S., and s. 24(b) of Art. I of the State Constitution.³⁹

Section 3 provides an effective date that is contingent upon, and concurrent with, passage of SB 422, which shall take effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the Legislature for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill provides that information that is confidential and exempt from s. 119.07(1), F.S., remain confidential and exempt when held by an elder abuse fatality review team. The bill also allows that a record created by a review team that identifies the victim of elder abuse remain confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

Portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed would be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

C. Trust Funds Restrictions:

None.

³⁸ Chapter 2000-219, s. 2, Laws of Fla.

³⁹ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 422 authorizes the establishment of elder abuse fatality review teams to review fatal incidents of elder abuse.

VIII. Statutes Affected:

This bill substantially amends s. 415.1103 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 January 10, 2018:

The Committee Substitute:

- Corrects technical deficiencies regarding terminology for public records and meetings; and
- Provides citations to SB 422, the linked bill for the public records exemption.

B. Amendments:

None.



900002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (9), (10), and (11) are added to
section 415.1103, Florida Statutes, as created by SB 422, to
read:

415.1103 Elder abuse fatality review teams.—

(9) (a) Any information that is exempt or confidential and
exempt from s. 119.07(1) and s. 24(a), Art. I of the State



900002

11 Constitution and that is obtained by an elder abuse fatality
12 review team conducting a review under this section retains its
13 exempt or confidential and exempt status when held by an elder
14 abuse fatality review team.

15 (b) Any information contained in a record created by an
16 elder abuse fatality review team which reveals the identity of a
17 victim of elder abuse is confidential and exempt from s.
18 119.07(1) and s. 24(a), Art. I of the State Constitution.

19 (10) Portions of meetings of an elder abuse fatality review
20 team at which exempt or confidential and exempt information or
21 the identity of a victim of elder abuse is discussed are exempt
22 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

23 (11) Subsections (9) and (10) are subject to the Open
24 Government Sunset Review Act in accordance with s. 119.15 and
25 shall stand repealed on October 2, 2023, unless reviewed and
26 saved from repeal through reenactment by the Legislature.

27 Section 2. (1) The Legislature finds that it is a public
28 necessity that information that is exempt or confidential and
29 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
30 Article I of the State Constitution remain exempt or
31 confidential and exempt when held by an elder abuse fatality
32 review team and that any information contained in a record
33 created by an elder abuse fatality review team which reveals the
34 identity of a victim of elder abuse be confidential and exempt
35 from public records requirements. Otherwise, sensitive personal
36 information concerning victims of elder abuse would be disclosed
37 and open communication and coordination among the parties
38 involved in the elder abuse fatality review teams would be
39 hampered. The harm that would result from the release of such



900002

40 information substantially outweighs any public benefit that
41 would be achieved by disclosure.

42 (2) The Legislature further finds that it is a public
43 necessity that portions of meetings of an elder abuse fatality
44 review team at which exempt or confidential and exempt
45 information or the identity of a victim of elder abuse is
46 discussed be exempt from s. 286.011, Florida Statutes, and s.
47 24(b), Article I of the State Constitution. The failure to close
48 portions of meetings at which exempt or confidential and exempt
49 information or the identity of a victim of elder abuse are
50 discussed would defeat the purpose of the public records
51 exemption. Further, the Legislature finds that the exemption is
52 narrowly tailored to apply to only certain portions of meetings
53 of elder abuse fatality review teams to allow for public
54 oversight.

55 Section 3. This act shall take effect on the same date that
56 SB 422 or similar legislation takes effect, if such legislation
57 is adopted in the same legislative session or an extension
58 thereof and becomes a 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 and public meetings;
66 amending s. 415.1103, F.S.; specifying that
67 information obtained by an elder abuse fatality review
68 team which is exempt or confidential and exempt from



900002

69 public records requirements retains its protected
70 status; providing an exemption from public records
71 requirements for identifying information of an elder
72 abuse victim in records created by a review team;
73 providing an exemption from public meetings
74 requirements for portions of review team meetings at
75 which exempt or confidential and exempt information or
76 the identity of an elder abuse victim is discussed;
77 providing for future legislative review and repeal;
78 providing statements of public necessity; providing a
79 contingent effective date.

By Senator Gibson

6-00538-18

2018424__

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 amending s. 415.1103, F.S.; specifying that
 4 information obtained by an elder abuse fatality review
 5 team which is confidential or exempt from public
 6 records requirements retains its protected status;
 7 providing an exemption from public records
 8 requirements for identifying information of an elder
 9 abuse victim in records created by a review team;
 10 providing an exemption from public meetings
 11 requirements for portions of review team meetings at
 12 which confidential or exempt information or the
 13 identity of an elder abuse victim is discussed;
 14 providing for future legislative review and repeal;
 15 providing statements of public necessity; providing a
 16 contingent effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Subsections (10), (11), and (12) are added to
 21 section 415.1103, Florida Statutes, as created by SB ____, to
 22 read:
 23 415.1103 Elder abuse fatality review teams.-
 24 (10) (a) Any information that is confidential or exempt from
 25 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
 26 that is obtained by an elder abuse fatality review team
 27 conducting a review under this section retains its confidential
 28 or exempt status when held by an elder abuse fatality review
 29 team.

Page 1 of 3

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

6-00538-18

2018424__

30 (b) Any information contained in a record created by an
 31 elder abuse fatality review team which reveals the identity of a
 32 victim of elder abuse is confidential and exempt from s.
 33 119.07(1) and s. 24(a), Art. I of the State Constitution.
 34 (11) Portions of meetings of an elder abuse fatality review
 35 team at which confidential or exempt information or the identity
 36 of a victim of elder abuse is discussed are exempt from s.
 37 286.011 and s. 24(b), Art. I of the State Constitution.
 38 (12) Subsections (10) and (11) are subject to the Open
 39 Government Sunset Review Act in accordance with s. 119.15 and
 40 shall stand repealed on October 2, 2023, unless reviewed and
 41 saved from repeal through reenactment by the Legislature.
 42 Section 2. (1) The Legislature finds that it is a public
 43 necessity that information that is confidential or exempt from
 44 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 45 State Constitution remain confidential or exempt when held by an
 46 elder abuse fatality review team and that any information
 47 contained in a record created by an elder abuse fatality review
 48 team which reveals the identity of a victim of elder abuse be
 49 confidential and exempt from public records requirements.
 50 Otherwise, sensitive personal information concerning victims of
 51 elder abuse would be disclosed and open communication and
 52 coordination among the parties involved in the elder abuse
 53 fatality review teams would be hampered. The harm that would
 54 result from the release of such information substantially
 55 outweighs any public benefit that would be achieved by
 56 disclosure.
 57 (2) The Legislature further finds that it is a public
 58 necessity that portions of meetings of an elder abuse fatality

Page 2 of 3

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

6-00538-18

2018424__

59 review team at which confidential or exempt information or the
60 identity of a victim of elder abuse is discussed be exempt from
61 s. 286.011, Florida Statutes, and s. 24(b), Article I of the
62 State Constitution. The failure to close portions of meetings at
63 which confidential or exempt information or the identity of a
64 victim of elder abuse are discussed would defeat the purpose of
65 the public records exemption. Further, the Legislature finds
66 that the exemption is narrowly tailored to apply to only certain
67 portions of meetings of elder abuse fatality review teams to
68 allow for public oversight.

69 Section 3. This act shall take effect on the same date that
70 SB ___ or similar legislation takes effect, if such legislation
71 is adopted in the same legislative session or an extension
72 thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/10/18
Meeting Date

SB 424
Bill Number (if applicable)

Topic Elder Abuse Fatality Reviews Team

Amendment Barcode (if applicable)

Name Linda Levin

Job Title Executive Director

Address 10688 Old St. Augustine Rd
Street

Phone 904 391 6610

Jacksonville FL 32257
City State Zip

Email linda.levin@myeldersource.org

Speaking: For Against Information

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

Representing Elder Source

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: SB 560

INTRODUCER: Senator Steube

SUBJECT: Public Meetings and Records/Imminent Litigation

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 560 expands a public meeting exemption that presently allows certain individuals of a governmental entity to discuss litigation pending before a court or administrative agency. More specifically, the current exemption authorizes board and commission members and the chief administrative or executive officer of the entity to conduct a private meeting about pending litigation with the attorney of the entity.

The bill broadens the exemption to additionally authorize a private meeting for the purpose of discussing imminent litigation. Litigation is imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

The bill subjects the parties involved in discussions of imminent litigation to the same standards that apply to private discussions of pending litigation.

Therefore:

- The attorney must advise the entity at a public meeting that he or she is seeking advice about the litigation.
- The subject matter at the private meeting is limited to settlement negotiations or strategy sessions related to legal expenses.
- The entire session must be recorded by a certified court reporter.
- The entity must provide reasonable public notice of the time and date of the attorney-client session, and other information related to the process.

If the imminent litigation does not proceed, the transcript of the private meeting must be made part of the public record the earlier of within a reasonable time or when the underlying statute of limitations expires.

These new provisions are subject to review under the Open Government Sunset Review Act and repeal October 2, 2023, unless reviewed and saved from repeal by legislative reenactment.

The bill includes a public necessity statement and requires a two-thirds vote of each house of the Legislature for passage.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

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

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

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.²⁵ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³² or
- It protects trade or business secrets.³³

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁵ 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.³⁶

Exemption for Private Meetings with an Attorney

In 1993, the Legislature created an exemption to the public meeting requirements by allowing a private meeting between a governmental entity and its attorney.³⁷ Specifically, a board or commission of a state agency or other specified authority³⁸ and the chief administrative or executive officer of the entity may meet in private with the entity's attorney to discuss *pending litigation* that the entity is *presently* a party to, before a court or administrative agency.

To qualify as an exempt meeting:

- The entity's attorney must advise the entity at a public meeting that he or she desires advice concerning the litigation.
- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- The entire session must be recorded by a certified court reporter during which no portion of the session may be off the record and the notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- The entity must give reasonable public notice of the time and date of the attorney-client session and name all persons who will be attending. The session must begin at an open

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ Section 286.011(8), F.S., Ch. 93-232, s. 1, L.O.F.

³⁸ Section 286.011(8), F.S., also lists other entities to include "any agency or authority of any county, municipal corporation, or political subdivision."

meeting where it is announced by the chair the beginning and estimated length of the meeting and the names of the people attending. When the session ends, the meeting must be reopened and the chair must announce the termination of the session.

- The transcript must be made part of the public record when the litigation is concluded.

In 1998, the Attorney General rendered an opinion clarifying when litigation is pending.³⁹ The opinion stated that the exemption for *pending litigation* does not apply “if no lawsuit has been filed even though the parties involved believe that litigation is inevitable.” The opinion concluded that the Legislature, had it intended, could have extended the exemption to include impending or imminent litigation.

As a result of this interpretation, governmental entities may not use this exemption to discuss settlement options or strategies tied to litigation that is *imminent* but not formally initiated by the filing of a complaint or petition. Even when a demand letter has been presented to a government entity who will soon be a defendant, the attorney may not meet privately with his or her governmental client. As a result, this inability to have preliminary discussions may have an adverse impact on a governmental entity because the opportunity to settle the case, reduce the issues to be litigated, and potentially reduce upcoming legal fees and costs is prohibited.

III. Effect of Proposed Changes:

This bill expands a public meeting exemption that allows certain individuals of a governmental entity to discuss litigation pending before a court or administrative agency. The current exemption authorizes board and commission members and the chief administrative or executive officer of the entity to conduct a private meeting about pending litigation with the attorney of the entity.

The bill broadens the exemption to additionally authorize a private meeting for the purpose of discussing imminent litigation. Litigation is considered imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

The bill subjects the parties involved in discussions of imminent litigation to the same standards that apply to discussions of pending litigation.

Therefore:

- The attorney must advise the entity at a public meeting that he or she is seeking advice about the litigation.
- The subject matter at the private meeting is limited to settlement negotiations or strategy sessions related to legal expenses.
- The entire session must be recorded by a certified court reporter.
- The entity must provide reasonable public notice of the time and date of the attorney-client session, and other information related to the process.

³⁹ AGO 98-21; AGO 2004-35.

If the imminent litigation does not proceed, the transcript of the private meeting must be made part of the public record the earlier of when it becomes apparent to the governmental entity that any litigation will not occur or when the underlying statute of limitations expires.

As the public meetings bill expands an existing exemption, a statement of public necessity is required. The statement of public necessity notes that the private meeting is necessary to privately prepare for threatened litigation by obtaining legal advice, exploring and developing relevant facts, and considering an early settlement or other options to make decisions that are better informed. The public necessity statement provides that the bill is also needed to facilitate that governmental entities receive fair treatment during judicial and administrative processes.

These new provisions are subject to review under the Open Government Sunset Review Act and will be repealed on October 2, 2023, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

When a bill creates or expands an exemption to the public meeting law, a favorable two-thirds vote of each house of the Legislature for passage is required.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By allowing individuals of a government entity to privately meet with the attorney of the entity to discuss imminent litigation, private parties may financially benefit from early settlement, such as through reduced billable hours and other costs of litigation.

C. Government Sector Impact:

The bill may reduce a governmental entity's legal fees by allowing claims to be resolved before they turn into lawsuits and are more costly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 286.011 of the Florida Statutes and creates an undesignated section of law.

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

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

None.

B. Amendments:

None.

By Senator Steube

23-00772-18

2018560__

A bill to be entitled

An act relating to public meetings and records; amending s. 286.011, F.S.; expanding an exemption from public meetings requirements to allow specified entities to meet in private with an attorney to discuss imminent litigation if certain conditions are met; requiring the entity's attorney to identify the name of the potential claimant or litigant at a public meeting; requiring the transcript of a private meeting concerning imminent litigation to be made public upon the occurrence of a certain circumstance; specifying when litigation is considered imminent; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (8) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(8) ~~(a)~~ Notwithstanding ~~the provisions of~~ subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, is exempt from this section and s. 24(b), Art. I of the State Constitution for the limited purpose of meeting may meet in private with the entity's

Page 1 of 4

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

23-00772-18

2018560__

attorney to discuss imminent or pending litigation to which the entity is or may in the foreseeable future be ~~presently~~ a party before a court or administrative agency, provided that the following conditions are met:

~~1. (a)~~ The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the imminent or pending litigation. For imminent litigation, the entity's attorney shall identify the name of the potential claimant or litigant.

~~2. (b)~~ The subject matter of the meeting must ~~shall~~ be confined to settlement negotiations or strategy sessions related to litigation expenditures.

~~3. (c)~~ The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session may ~~shall~~ be off the record. The court reporter's notes must ~~shall~~ be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

~~4. (d)~~ The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must ~~shall~~ commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting must ~~shall~~ be reopened, and the person chairing the meeting shall announce the termination of the session.

Page 2 of 4

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

23-00772-18

2018560__

59 5.(e) The transcript must ~~shall~~ be made part of the public
 60 record upon conclusion of the litigation. If imminent litigation
 61 does not commence, the transcript must be made part of the
 62 public record within a reasonable time after the matter
 63 underlying the imminent litigation is resolved or upon the
 64 expiration of the statute of limitations applicable to the
 65 matter underlying the imminent litigation, whichever occurs
 66 first.

67 (b) Litigation is considered imminent when the entity has
 68 received notice of a claim or demand by a party threatening
 69 litigation before a court or administrative agency.

70 (c) This subsection is subject to the Open Government
 71 Sunset Review Act in accordance with s. 119.15 and shall stand
 72 repealed on October 2, 2023, unless reviewed and saved from
 73 repeal through reenactment by the Legislature.

74 Section 2. The Legislature finds that it is a public
 75 necessity to expand the exemption from public meetings
 76 requirements currently applicable to meetings at which any board
 77 or commission of any state agency or authority, or any agency or
 78 authority of any county, municipal corporation, or political
 79 subdivision, and the chief administrative or executive officer
 80 of the governmental entity meet in private with the entity's
 81 attorneys to discuss pending litigation to which the entity is
 82 presently a party before a court or administrative agency to
 83 include such meetings related to certain imminent litigation.
 84 Expanding this exemption is necessary to allow a governmental
 85 entity to privately prepare for threatened litigation by
 86 obtaining legal advice, exploring and developing relevant facts,
 87 and considering an early settlement or discussing other possible

Page 3 of 4

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

23-00772-18

2018560__

88 resolutions in order to make better-informed decisions. The
 89 Legislature also finds that expanding this public meetings
 90 exemption will help ensure that governmental entities receive
 91 fair treatment during the judicial and administrative processes.

92 Section 3. This act shall take effect July 1, 2018.

Page 4 of 4

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

November 14, 2017

The Honorable Dennis Baxley
Florida Senate
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Baxley,

I am writing this letter because my bill, SB 560 – Public Meetings and Records/Imminent Litigation, has been referred to the Senate Government Oversight and Accountability Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in black ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/10/18

Meeting Date

560

Bill Number (if applicable)

Topic SB 560

Amendment Barcode (if applicable)

Name ELYN Bogdanoff

Job Title _____

Address 1 E Bnd Blvd

Street

Phone _____

FTL FL 33316

City

State

Zip

Email ebogdanoff@bplegal.com

Speaking: For Against Information

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

Representing City of Miami

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-10-18
Meeting Date

560
Bill Number (if applicable)

Topic Public Records - Litigation ^{Inherent} Amendment Barcode (if applicable)

Name C. Scott Dudley

Job Title Legislative Director

Address 301 S. Bronough Street

Phone 850-570-7286

Street
Tallahassee FL 32301

Email sdudley@flhcr.com

City State Zip

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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: SB 608

INTRODUCER: Senator Passidomo

SUBJECT: Public Records/Identity Theft and Fraud Protection Act

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 608 creates the Identity Theft and Fraud Protection Act and requires an agency to review information to determine if it is susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website. The bill requires the Division of Library and Information Services of the Department of State to adopt rules establishing uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

The bill also requires an agency to establish a policy that allows a person to request removal of an image or a copy of a public record containing information susceptible to use for purposes of identity theft or fraud which is posted on an agency's publicly available website. An agency is not prohibited from posting information not otherwise authorized under the bill to a limited access area of the agency's website not made available to the general public.

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Chapter 817, Fraudulent Practices

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices against individuals, corporations, and governments. Fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.¹ Identity theft or fraud is the criminal use of an individual's personal identification

¹ Black's Law Dictionary (9th ed. 2009).

information.² Identity thieves steal such information as a person's name, social security number, driver's license information, or bank and credit card accounts and use the information to establish credit, make purchases, apply for loans, or seek employment. According to the Federal Trade Commission, Florida ranked second in the nation for identity theft in 2017, with 38,384 reported complaints.³

Section 817.568, F.S., punishes criminal use of personal identification information.⁴ For example, the statute makes it a third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. The statute provides enhanced penalties if:

- The pecuniary benefit exceeds a specified amount;
- The person fraudulently uses the information of more than a certain number of people;
- The person commits the offense for purposes of harassment; or
- The victim is younger than 18 years of age or 60 years of age or older.

Secretary of State

The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor.⁵ The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State.⁶ The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records.⁷ The Department of State is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.⁸

III. Effect of Proposed Changes:

Section 1 provides that the bill may be cited as the "Identity Theft and Fraud Protection Act."

² Florida Office of the Attorney General Pam Bondi, *Identity Theft Narrative*, available at <http://myfloridalegal.com/pages.nsf/Main/3C2A3BA3C2DA5C6F85256DBE006C1B30?OpenDocument> (last visited on January 3, 2018).

³ *Id.*

⁴ Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

⁵ Section 20.10(1), F.S.

⁶ See <http://dos.myflorida.com/about-the-department/> (last visited on January 3, 2018).

⁷ Section 20.10(1), F.S.

⁸ Section 20.10(2), F.S.

Section 2 amends section 119.021, F.S., to require a state agency,⁹ before posting an information on a publicly available website, to review the information to determine if it is susceptible to use for purposes of identity theft or fraud. The state agency is prohibited from posting an image or a copy of, or information from, a public record on the agency's publicly available website or another publicly available website used by the agency if the public record contains information susceptible to use for purposes of identity theft or fraud.

The bill requires the Division of Library and Information Services of the Department of State to adopt rules to establish uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

The bill also requires an agency to establish a policy that allows a person, or his or her attorney or legal guardian, to request that the agency remove an image or a copy of a public record containing information that is susceptible to use for purposes of identity theft or fraud which is posted on the agency's publicly available website or another publicly available website used by the agency to display such records. The request must specify which record contains the information that is susceptible to identity theft or fraud. Upon a valid request, the agency must remove the posting of the record containing such information as expeditiously as possible. The agency may not charge a fee to the person making such a request.

Additionally, the bill does not prohibit an agency from posting images or copies of records not otherwise authorized under this section to a limited access area of the agency's website not made available to the general public. This provision does not authorize the disclosure of information or records that are otherwise exempted by law from public disclosure.

Section 3 provides a legislative finding that the act fulfills an important state interest.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

⁹ 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."

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:

None.

VII. Related Issues:

This bill is not a new public records exemption, but it creates a process for state agencies to consider what information is posted on publicly available websites.

VIII. Statutes Affected:

This bill substantially amends section 119.021 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Passidomo

28-00495-18

2018608__

1 A bill to be entitled
 2 An act relating to public records; providing a short
 3 title; amending s. 119.021, F.S.; requiring an agency
 4 to review for information susceptible to use for
 5 purposes of identity theft or fraud before making
 6 postings to a publicly available website; prohibiting
 7 an agency from posting to a publicly available website
 8 an image or a copy of a public record containing
 9 information susceptible to use for purposes of
 10 identity theft or fraud; requiring the Division of
 11 Library and Information Services of the Department of
 12 State to adopt certain rules; requiring an agency to
 13 establish a policy providing for requests to remove an
 14 image or a copy of a public record containing
 15 information susceptible to use for purposes of
 16 identity theft and fraud; specifying requirements for
 17 the policy; authorizing an agency to post images or
 18 copies of records containing information which is not
 19 otherwise exempt to portions of websites not
 20 accessible to the general public; providing a finding
 21 of an important state interest; providing an effective
 22 date.

23
 24 WHEREAS, according to the Federal Trade Commission, Florida
 25 repeatedly has been ranked as one of the states with the highest
 26 instances of reported identity theft and fraud complaints, and

27 WHEREAS, identity theft and fraud continues to be of great
 28 concern to many Floridians, especially in light of many recent
 29 security and data breaches that have compromised the security of

Page 1 of 4

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

28-00495-18

2018608__

30 personal information, and
 31 WHEREAS, while there is no general requirement that
 32 agencies post public records on publicly available websites,
 33 numerous agencies often post such records online for the
 34 convenience to the agency and the public, and
 35 WHEREAS, the Legislature acknowledges that the ease of
 36 access to certain public records on websites can aid the public
 37 and many business entities to obtain certain information quickly
 38 and easily, but also recognizes that agencies should be required
 39 to consider the impact of posting certain public records on
 40 publicly available websites before taking such action, and
 41 WHEREAS, in some cases, perpetrators of identity theft and
 42 fraud have accessed information about individuals through public
 43 records posted on the websites of agencies, and
 44 WHEREAS, the Legislature finds that it is critical that it
 45 take steps to protect information contained in public records
 46 that is susceptible to use for purposes of identity theft and
 47 fraud, while also respecting the state's strong public policy in
 48 favor of open government, NOW, THEREFORE,
 49
 50 Be It Enacted by the Legislature of the State of Florida:
 51
 52 Section 1. This act may be cited as the "Identity Theft and
 53 Fraud Protection Act."
 54 Section 2. Subsection (5) is added to section 119.021,
 55 Florida Statutes, to read:
 56 119.021 Custodial requirements; maintenance, preservation,
 57 and retention of public records.—
 58 (5) (a) Before posting any information on a publicly

Page 2 of 4

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

28-00495-18

2018608__

59 available website, an agency must review the information to
 60 determine if it is susceptible to use for purposes of identity
 61 theft or fraud. An agency may not post an image or a copy of, or
 62 information from, a public record on the agency's publicly
 63 available website or another publicly available website used by
 64 the agency if the public record contains information susceptible
 65 to use for purposes of identity theft or fraud.

66 (b) The Division of Library and Information Services of the
 67 Department of State shall adopt rules to establish uniform
 68 standards for agencies in determining the types of information
 69 which qualify as information that is susceptible to use for
 70 purposes of identity theft or fraud.

71 (c) An agency must establish a policy that allows a person,
 72 or his or her attorney or legal guardian, to request that the
 73 agency remove an image or a copy of a public record containing
 74 information that is susceptible to use for purposes of identity
 75 theft or fraud which is posted on the agency's publicly
 76 available website or another publicly available website used by
 77 the agency to display such records. A request must specify which
 78 record contains the information that is susceptible to identify
 79 theft or fraud. Upon receipt of a valid request, the agency
 80 shall remove the posting of the record containing such
 81 information as expeditiously as possible. An agency may not
 82 charge a fee to the person making such a request.

83 (d) This subsection does not prohibit an agency from
 84 posting information or images or copies of records not otherwise
 85 authorized under paragraph (a) to a limited access area of the
 86 agency's website not made available to the general public. This
 87 paragraph does not authorize the disclosure of information or

Page 3 of 4

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

28-00495-18

2018608__

88 records that are otherwise exempted by law from public
 89 disclosure.

90 Section 3. The Legislature finds that a proper and
 91 legitimate state purpose is served when protecting the
 92 identifying information of the residents of this state in order
 93 to reduce the risk of identity theft and fraud. Therefore, the
 94 Legislature determines and declares that this act fulfills an
 95 important state interest.

96 Section 4. This act shall take effect July 1, 2018.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: November 3, 2017

I respectfully request that **Senate Bill #608**, relating to Public Records/Identity Theft and Fraud Protection Act, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 750

INTRODUCER: Senator Perry

SUBJECT: Public Records

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 750 prohibits an agency that receives a public records request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

The bill takes effect on July 1, 2018.

II. Present Situation:

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state’s public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption

¹ Section 119.011(2), F.S., defines the term “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 chapter 119, F.S., 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.

² Section 119.011(12), F.S., defines the term “public records” to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records³ (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,⁴ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.⁵

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.⁶ Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.⁷

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.07, F.S., and prohibits an agency that receives a public records request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

Section 2 of the bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

³ Section 119.011(5), F.S., defines the term "custodian of public records" to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

⁴ There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

⁵ See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

⁶ *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

⁷ Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may have an indeterminate positive impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by a state agency

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.07 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Perry

8-00956-18

2018750__

1 A bill to be entitled
2 An act relating to public records; amending s. 119.07,
3 F.S.; prohibiting an agency that receives a request to
4 inspect or copy a record from responding to such
5 request by filing a civil action against the
6 individual or entity making the request; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Paragraph (j) is added to subsection (1) of
12 section 119.07, Florida Statutes, to read:

13 119.07 Inspection and copying of records; photographing
14 public records; fees; exemptions.—

15 (1)

16 (j) An agency that receives a request to inspect or copy a
17 public record is prohibited from responding to such request by
18 filing a civil action against the individual or entity making
19 the request.

20 Section 2. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: November 15, 2017

I respectfully request that **Senate Bill #750**, relating to Public Records , be placed on the:

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



Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-10-18
Meeting Date

750
Bill Number (if applicable)

Topic Public Records - Declaratory Actions

Amendment Barcode (if applicable)

Name C. Scott Dudley

Job Title Legislative Director

Address 305 S. Bronough
Street
Vero FL 32301
City State Zip

Phone 850-570-7296

Email sdudley@lfra.com

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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/SB 826

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hukill

SUBJECT: Taxpayers' Rights Advocate

DATE: January 10, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Fav/CS
2.			AFT	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 requires the Chief Inspector General to appoint the taxpayers' rights advocate within the Department of Revenue, revises the supervisory authority over the taxpayers' rights advocate and provides that such advocate may be removed from office only by the Chief Inspector General for cause.

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Taxpayers' Rights Advocate

The taxpayers' rights advocate located within the Department of Revenue¹ (Department) is appointed by and reports to the executive director of the Department.² The taxpayers' rights advocate facilitates the resolution of taxpayer complaints and problems that have not been resolved through normal administrative channel within the Department, including taxpayer complaints regarding unsatisfactory treatment of taxpayers by Department employees.³ The

¹ Section 20.21(1), F.S. The head of the Department is the Governor and the Cabinet.

² Sections 20.21(3) and 213.018(1), F.S.

³ Sections 20.21(3)(a), 213.015(2) and 213.018, F.S.

taxpayers' rights advocate may also issue a stay of action on behalf of a taxpayer who has suffered or is about to suffer irreparable loss as a result of action by the Department.⁴

Section 213.015, F.S., created a Florida Taxpayers' Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessments, collection, and enforcement processes administered under the revenue laws of this state.⁵ Twenty-one rights are compiled in the Taxpayers' Bill of Rights, including the right of assistance from a taxpayers' rights advocate of the Department.⁶ The Department's executive director is required to designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.⁷

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.⁸ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.⁹ Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinating complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act¹⁰ and maintaining the whistle-blower's hotline;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conducting special investigations and management reviews at the request of the Governor.¹¹

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.¹²

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 20.21, F.S., to require the Chief Inspector General to appoint the taxpayers' rights advocate within the Department. The taxpayers' rights advocate remains under the general supervision of the agency head for administrative purposes, but reports to the Chief

⁴ Sections 20.21(3)(b) and 213.018(2), F.S.

⁵ See FLA. CONST., ART 1, s. 25.

⁶ Section 213.015, F.S. Also, see http://floridarevenue.com/Pages/taxpayers_bill_of_rights.aspx (last visited on Dec. 5, 2017).

⁷ Section 213.018(1), F.S.

⁸ Section 14.32(1), F.S.

⁹ *Id.*

¹⁰ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

¹¹ Section 14.32(2), F.S.

¹² Section 14.32(3), F.S.

Inspector General. The bill provides that the taxpayers' rights advocate may be removed from office only by the Chief Inspector General for cause.

The bill further requires the taxpayers' rights advocate to furnish an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Inspector General by January 1 of each year. Such report must include the following:

- The objectives of the taxpayers' rights advocate for the upcoming fiscal year;
- The number of complaints filed in the previous fiscal year;
- A summary of resolutions or outstanding issues from the previous fiscal year report;
- A summary of the most serious problems encountered by taxpayers, including a description of the nature of the problems, and the number of complaints for each serious problem;
- The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the Department's responsiveness;
- Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers; and
- Other information as the taxpayers' rights advocate may deem advisable.

This report must contain a complete and substantive analysis in addition to statistical information.

Section 2 of the bill amends s. 213.018, F.S., to require the Chief Inspector General to appoint a taxpayers' rights advocate within the Department.

Section 3 of the bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 20.21 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on January 10, 2018:

The Committee Substitute requires the Chief Inspector General to appoint the taxpayers' rights advocate within the Department.

B. Amendments:

None.



348024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 20.21, Florida
Statutes, is amended to read:

20.21 Department of Revenue.—There is created a Department
of Revenue.

(3) The position of taxpayers' rights advocate is created
within the Department of Revenue. The taxpayers' rights advocate



348024

11 shall be appointed by the Chief Inspector General but is under
12 the general supervision of the agency head for administrative
13 purposes. The taxpayers' rights advocate must report to the
14 Chief Inspector General and may be removed from office only by
15 the Chief Inspector General ~~shall be appointed by and report to~~
16 ~~the executive director of the department.~~ The responsibilities
17 of the taxpayers' rights advocate include, but are not limited
18 to, the following:

19 (a) Facilitating the resolution of taxpayer complaints and
20 problems which have not been resolved through normal
21 administrative channels within the department, including any
22 taxpayer complaints regarding unsatisfactory treatment of
23 taxpayers by employees of the department.

24 (b) Issuing a stay action on behalf of a taxpayer who has
25 suffered or is about to suffer irreparable loss as a result of
26 action by the department.

27 (c) On or before January 1 of each year, the taxpayers'
28 rights advocate shall furnish to the Governor, the President of
29 the Senate, the Speaker of the House of Representatives, and the
30 Chief Inspector General a report that must include the
31 following:

32 1. The objectives of the taxpayers' rights advocate for the
33 upcoming fiscal year.

34 2. The number of complaints filed in the previous fiscal
35 year.

36 3. A summary of resolutions or outstanding issues from the
37 previous fiscal year report.

38 4. A summary of the most serious problems encountered by
39 taxpayers, including a description of the nature of the



348024

40 problems, and the number of complaints for each such serious
41 problem.

42 5. The initiatives the taxpayers' rights advocate has taken
43 or is planning to take to improve taxpayer services and the
44 department's responsiveness.

45 6. Recommendations for administrative or legislative action
46 as appropriate to resolve problems encountered by taxpayers.

47 7. Other information as the taxpayers' rights advocate may
48 deem advisable.

49

50 The report must contain a complete and substantive analysis in
51 addition to statistical information.

52 Section 2. Subsection (1) of section 213.018, Florida
53 Statutes, is amended to read:

54 213.018 Taxpayer problem resolution program; taxpayer
55 assistance orders.—A taxpayer problem resolution program shall
56 be available to taxpayers to facilitate the prompt review and
57 resolution of taxpayer complaints and problems which have not
58 been addressed or remedied through normal administrative
59 proceedings or operational procedures and to assure that
60 taxpayer rights are safeguarded and protected during tax
61 determination and collection processes.

62 (1) The Chief Inspector General shall appoint a taxpayers'
63 rights advocate, and the executive director of the Department of
64 Revenue shall designate a ~~taxpayers' rights advocate~~ and
65 adequate staff to administer the taxpayer problem resolution
66 program.

67 Section 3. This act shall take effect July 1, 2018.

68



348024

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

70 And the title is amended as follows:

71 Delete everything before the enacting clause

72 and insert:

73 A bill to be entitled

74 An act relating to the taxpayers' rights advocate;
75 amending s. 20.21, F.S.; providing for the appointment
76 of the taxpayers' rights advocate within the
77 Department of Revenue by the Chief Inspector General
78 rather than by the department's executive director;
79 revising the supervisory authority over the taxpayers'
80 rights advocate; providing that the taxpayers' rights
81 advocate may be removed from office only by the Chief
82 Inspector General; requiring the taxpayers' rights
83 advocate to furnish an annual report to the Governor,
84 the Legislature, and the Chief Inspector General by a
85 specified date; providing requirements for the report;
86 amending s. 213.018, F.S.; conforming a provision to
87 changes made by the act; providing an effective date.

By Senator Hukill

14-00745-18

2018826__

1 A bill to be entitled
 2 An act relating to the taxpayers' rights advocate;
 3 amending s. 20.21, F.S.; revising the supervisory
 4 authority over the taxpayers' rights advocate within
 5 the Department of Revenue; providing that the
 6 taxpayers' rights advocate may be removed from office
 7 only by the Chief Inspector General for cause;
 8 requiring the taxpayers' rights advocate to furnish an
 9 annual report to the Governor, the Legislature, and
 10 the Chief Inspector General by a specified date;
 11 providing requirements for the report; providing an
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (3) of section 20.21, Florida
 17 Statutes, is amended to read:

18 20.21 Department of Revenue.—There is created a Department
 19 of Revenue.

20 (3) The position of taxpayers' rights advocate is created
 21 within the Department of Revenue. The taxpayers' rights advocate
 22 is under the general supervision of the agency head for
 23 administrative purposes, but must report to the Chief Inspector
 24 General and may be removed from office only by the Chief
 25 Inspector General for cause ~~shall be appointed by and report to~~
 26 ~~the executive director of the department~~. The responsibilities
 27 of the taxpayers' rights advocate include, but are not limited
 28 to, the following:

29 (a) Facilitating the resolution of taxpayer complaints and

Page 1 of 3

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

14-00745-18

2018826__

30 problems which have not been resolved through normal
 31 administrative channels within the department, including any
 32 taxpayer complaints regarding unsatisfactory treatment of
 33 taxpayers by employees of the department.

34 (b) Issuing a stay action on behalf of a taxpayer who has
 35 suffered or is about to suffer irreparable loss as a result of
 36 action by the department.

37 (c) On or before January 1 of each year, the taxpayers'
 38 rights advocate shall furnish to the Governor, the President of
 39 the Senate, the Speaker of the House of Representatives, and the
 40 Chief Inspector General a report that must include the
 41 following:

42 1. The objectives of the taxpayers' rights advocate for the
 43 upcoming fiscal year.

44 2. The number of complaints filed in the previous fiscal
 45 year.

46 3. A summary of resolutions or outstanding issues from the
 47 previous fiscal year report.

48 4. A summary of the most serious problems encountered by
 49 taxpayers, including a description of the nature of the
 50 problems, and the number of complaints for each such serious
 51 problem.

52 5. The initiatives the taxpayers' rights advocate has taken
 53 or is planning to take to improve taxpayer services and the
 54 department's responsiveness.

55 6. Recommendations for administrative or legislative action
 56 as appropriate to resolve problems encountered by taxpayers.

57 7. Other information as the taxpayers' rights advocate may
 58 deem advisable.

Page 2 of 3

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

14-00745-18

2018826__

59
60
61
62

The report must contain a complete and substantive analysis in
addition to statistical information.

Section 2. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Appropriations Subcommittee on the
Environment and Natural Resources, *Vice Chair*
Regulated Industries, *Vice Chair*
Agriculture
Environmental Preservation and Conservation
Health Policy
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

14th District

November 29, 2017

The Honorable Dennis Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 826 – Taxpayers’ Rights Advocate

Dear Chairman Baxley:

Senate Bill 826, relating to Taxpayers’ Rights Advocate, has been referred to the Senate Committee on Governmental Oversight and Accountability. I respectfully request that SB 826 be placed on the committee agenda at your earliest possible convenience.

Should you need any additional information, please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 14

Cc: Diana Caldwell, Staff Director, Senate Committee on Governmental Oversight and Accountability
Tamra Redig, Administrative Assistant, Senate Committee on Governmental Oversight and Accountability

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- 434 Delannoy Avenue, Suite 204, Cocoa, Florida 32922 (321) 634-3549
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-10-18

Meeting Date

826

Bill Number (if applicable)

Topic Taxpayer Rights Advocate

Amendment Barcode (if applicable)

Name Kurt Wenner

Job Title Vice President

Address 106 N. Bronough

Phone 850-222-5052

Street

Tallahassee

FL

32301

Email kwenner@floridataxwatch.org

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Florida TaxWatch

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/18

Meeting Date

826

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5367

Tallahassee FL 32307
City State Zip

Email tim.nungesser@nfb.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 950

INTRODUCER: Senator Mayfield

SUBJECT: State Employment

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	GO	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 950 eliminates the Florida State Employees Charitable Contribution Campaign (FSECC), and provides that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, the bill does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive, voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The bill has an effective date of July 1, 2018.

II. Present Situation:

The FSECC is an annual charitable fundraising drive funded by state employees and maintained by the Department of Management Services (DMS) in coordination with the payroll system of the Department of Financial Services.¹ It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours for which the state provides a payroll deduction.² Universities are permitted to participate in the campaign, but are also authorized to conduct their own charitable fundraising drives for employees.³

Employees' participation in the campaign is entirely voluntary, and officers and employees are required to designate a charitable organization to receive their contributions, unless the

¹ Section 110.181(1)(a), F.S.

² *Id.*

³ Section 110.181(5), F.S.

contributions are collected as part of a campaign event.⁴ Each agency is responsible for conducting campaign events to promote and generate awareness of the campaign. Prior to 2016, agencies were authorized to collect cash donations at campaign events, however, in 2016, only payroll deductions were collected as part of the campaign as a cost saving measure.⁵

Organizations' participation in the annual campaign is limited to any nonprofit charitable organization that has as its principal mission:⁶

- Public health and welfare;
- Education;
- Environmental restoration and conservation;
- Civil and human rights; or
- The relief of human suffering and poverty.

Additionally, organizations ineligible to participate in the campaign include those:⁷

- Whose fundraising and administrative expenses exceed 25 percent;
- Whose activities contain an element that is more than incidentally political in nature or are primarily political, religious, professional, or fraternal in nature;
- That discriminate on account of race, color, religion, sex, national origin, age, handicap, or political affiliation;
- Not properly registered as a charitable organization as required by law;⁸ and
- That have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.

Over 1,000 charities have been approved to participate in the FSECC through the application process established by the DMS's Division of Human Resources.⁹ Charitable organizations participating in the campaign must be audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.¹⁰

Current law requires the DMS to competitively procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations,¹¹ and provides for the establishment of a Florida State Employees Charitable Campaign Steering Committee to make recommendations relating to the administration of the campaign.¹² The committee is made up of seven members appointed by the Administration Commission¹³ and two members appointed by the Secretary of the DMS.¹⁴ The Steering Committee meets periodically, usually once or twice each year.¹⁵

⁴ Section 110.181(1)(b), F.S.

⁵ Email from Samantha Ferrin, Department of Management Services, Deputy Director of Legislative and External Affairs (March 30, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

⁶ Section 110.181(1)(c), F.S.

⁷ Section 110.181(1)(e), F.S.

⁸ See the Solicitation of Contributions Act, ss. 496.401-496.424, F.S.

⁹ Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁰ Section 110.181(1)(d), F.S.

¹¹ Section 110.181(2)(a), F.S.

¹² Section 110.181 (4), F.S.

¹³ *Id.* Also see s. 20.03(1), F.S. The Administration Commission is composed of the Governor and Cabinet.

¹⁴ Section 110.181(4), F.S.

¹⁵ See *supra* note 5.

DMS historically awarded the fiscal agent contract to a nonprofit charitable organization that participated in the FSECC, but in 2010, the fiscal agent selection process was opened and services were competitively procured through Solix Grant Management Solutions (Solix) for the period January 1, 2013, through December 31, 2015.¹⁶ The initial contract with Solix provided for tiered compensation, with a minimum of \$546,415 for year one of the contract and actual documented costs for years two and three.¹⁷

In 2015, the DMS entered into a new 3-year contract with Solix for the period January 1, 2016, through December 31, 2018.¹⁸ For this contract period, fixed fees were initially agreed to for \$389,297 in year one, \$399,769 in year two, and \$411,631 in year three.¹⁹ However, on April 15, 2016, the Department and Solix agreed to amended contract terms that provided for a fixed \$180,000 fee for each year of the contract.²⁰

In May of 2016, the State of Florida Auditor General published an operational audit of the FSECC finding that during the time period covered by the initial contract with Solix the DMS did not ensure FSECC fiscal agent fees were supported by adequate documentation and did not adequately verify that employee contributions were appropriately distributed to participating charitable organizations.²¹ Prior to publication of the audit, the renewed contract with the fiscal agent had been modified to provide for a fixed fee and the DMS had implemented a procedure for verifying the distributions—therefore the need for corrective action was eliminated.²²

On December 5, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because it had only raised approximately \$282,000, which was its lowest amount in the campaign's history.²³

During its 36 year history, the FSECC raised over \$94 million.²⁴ However, over the last ten years contributions have declined sharply, as illustrated by the following table:²⁵

¹⁶ State of Florida Auditor General's Operational Audit of the Department of Management Services Florida State Employees' Charitable Campaign Report No. 2016-194. Available at https://flauditor.gov/pages/pdf_files/2016-194.pdf (last visited January 3, 2018).

¹⁷ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 11/12-018 (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁸ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 14/14-030. Available at: <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01> (last visited January 3, 2018).

¹⁹ *Id.*

²⁰ Amendment NO.:1 to Contract No.: DMS 14/15-030. Available at <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01> (last visited January 3, 2018).

²¹ *See supra* note 16.

²² *Id.*

²³ *State scraps Solix contract, suspends charity campaign*, Tallahassee Democrat, December 8, 2016, available at <http://www.tallahassee.com/story/news/2016/12/08/state-suspends-beleagured-fsecc/95139288/> (last visited January 3, 2018).

²⁴ Department of Management Services, *Donor Frequently Asked Questions*, question 1, page 2, available at <http://www.dms.myflorida.com/content/download/128373/798921/FAQ-Donor-2016.pdf> (last visited January 3, 2018).

²⁵ Figures provided in an email from Taylor Hatch, Department of Management Services, Senior Director of Policy and Legislative Affairs (November 17, 2016) (on file with the Senate Committee on Governmental Oversight and Accountability).

Campaign Year	Fiscal Agent	Charitable Contributions	Amount withheld by Fiscal Agent	Net Amount to Participating Charities	Fiscal Agent Costs as % of Contributions
2005-2006	United Way	\$ 4,963,346	\$ 691,065	\$ 4,272,281	13.9%
2006-2007	United Way	\$ 4,959,059	\$ 703,479	\$ 4,255,580	14.2%
2007-2008	United Way	\$ 4,869,270	\$ 706,683	\$ 4,162,587	14.5%
2008-2009	United Way	\$ 4,362,662	\$ 923,931	\$ 3,438,731	21.2%
2009-2010	United Way	\$ 4,171,177	\$ 850,877	\$ 3,320,300	20.4%
2010-2011	United Way	\$ 3,739,355	\$ 801,032	\$ 2,938,323	21.4%
2011-2012	United Way	\$ 2,688,902	\$ 796,616	\$ 1,892,286	29.6%
2012-2013	Solix, Inc.	\$ 1,762,030	\$ 546,415	\$ 1,215,615	31.0%
2013-2014	Solix, Inc.	\$ 982,387	\$ 470,470	\$ 511,917	47.9%
2014-2015	Solix, Inc.	\$ 869,004	\$ 453,599	\$ 415,405	52.2%
2015-2016	Solix, Inc.	\$ 546,186	\$ 180,000	\$ 366,186	33.0%
2016-2017	Solix, Inc.	\$ 282,000	\$ 180,000	\$ 102,000	63.8%

III. Effect of Proposed Changes:

Section 1 repeals s. 110.181, F.S., eliminating the FSECC.

Section 2 creates s. 110.182, F.S., providing that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, the bill does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive, voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

Section 3 provides an effective date of July 1, 2018.

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. Charitable organizations may see a decrease in contributions as a result of the bill. However, the DMS noted that technology advancements have allowed individuals the opportunity to donate directly to charities through a variety of methods that are easy, convenient and accessible, thereby reducing the need for payroll deduction based giving.²⁶

C. Government Sector Impact:

Indeterminate. Prohibiting solicitation of state employees within work areas during work hours will help to minimize workplace disruptions and potential costs associated with these solicitations. The costs associated with such fundraising requests could potentially include: review and response to solicitations, the use of public space and other resources, reduced employee productivity, and potential legal expenses due to issues of equitable access.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 110.182 of the Florida Statutes.

This bill repeals section 110.181 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.

²⁶ Department of Management Services *2018 Agency Legislative Bill Analysis*, dated December 20, 2017 (on file with the Senate Committee on Governmental Oversight and Accountability).

²⁷ *Id.*

B. Amendments:

None.

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

By Senator Mayfield

17-01091-18

2018950__

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

A bill to be entitled

An act relating to state employment; repealing s. 110.181, F.S., relating to the Florida State Employees' Charitable Campaign; creating s. 110.182, F.S.; prohibiting an organization, an entity, or a person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times; providing exceptions; providing an effective date.

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

Section 1. Section 110.181, Florida Statutes, is repealed.

Section 2. Section 110.182, Florida Statutes, is created to read:

110.182 Solicitation of state employees prohibited.—An organization, an entity, or a person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. This section does not prohibit the following:

(1) State-approved communications by entities with whom the state has contracted to provide employee benefits or services.

(2) Noncoercive voluntary communications between state employees in workplace areas.

(3) Activities at authorized public events occurring in nonwork areas of state-owned or leased facilities.

Section 3. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

December 6, 2017

The Honorable Dennis Baxley
Chair, Government Oversight and Accountability
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 950

Dear Chair Baxley,

I am respectfully requesting Senate Bill 950, a bill relating to State Employment, be placed on the agenda for your committee on Government Oversight and Accountability.

I appreciate your consideration of this bill and I look forward to working with you and the Government Oversight and Accountability. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,

A handwritten signature in cursive script that reads "Debbie Mayfield".

Senator Debbie Mayfield
District 17

Cc: Diana Caldwell, Tamra Redig, Debbie Dennis, Alex Bickley

REPLY TO:

- 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

COMMITTEES:

Education, Vice Chair
Appropriations Subcommittee on the
Environment and Natural Resources
Appropriations subcommittee on General
Government
Banking and Insurance
Judiciary

JOINT COMMITTEES:

Joint Legislative Auditing Committee,
Alternating Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-10-18

Meeting Date

SB 950

Bill Number (if applicable)

Topic SB 950

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Legislative Affairs Director

Address 4050 Esplanade Way

Phone 850-487-7001

Street

Tallahassee

FL

32399

City

State

Zip

Email meredith.stanfield@dms.myflorida.com

Speaking: For Against Information

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

Representing Department of Management Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/10/18
Meeting Date

950
Bill Number (if applicable)

Topic FSCC (state employment)

Amendment Barcode (if applicable)

Name JESSICA SCHER

Job Title Public Policy Director

Address 3250 SW 3rd Ave
Street

Phone 305-322-6143

MIAMI FL 33129
City State Zip

Email scheryj@unitedwaymiami.org

Speaking: For Against Information

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

Representing United Way of Miami-Dade

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: SB 7000

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal History Records/Department of Law Enforcement

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Jones</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7000 provides an Open Government Sunset Review of a public records exemption that protects from disclosure certain criminal history records of victims of human trafficking.

The original public necessity statement for the bill provides that victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crimes. Moreover, without the public records exemption, these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Additionally, since the time that the law passed enabling victims of human trafficking to seek an expunction of a criminal record, FDLE has processed 33 orders of expunction. Therefore, for these reasons, the bill reenacts the public records exemption.

This bill deletes the scheduled repeal of the current public records exemption for court-ordered expunged criminal history records of human trafficking victims. If the bill passes, these records will continue to be confidential and exempt from public disclosure.

The bill requires a majority vote for passage.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking, ranging from young children to adults, are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. An estimated 20.9 million adults and children in the world are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent are children. Based on 2010 data, researchers estimate that as many as 300,000 children in the United States are at risk for exploitation each year.²³

Section 787.06, F.S., Florida's human trafficking statute, defines "human trafficking" as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. A victim of human trafficking is a person subjected to coercion,²⁴ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.²⁵

Open Government Sunset Review of the Public Records Exemption for Expunged Criminal History Record of a Victim of Human Trafficking

In 2013, the Legislature created s. 943.0583, F.S.²⁶ Section 943.0583, F.S., allows a victim of human trafficking to petition the court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (Dec. 2011), available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited Dec. 14, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited Dec. 14, 2017).

²⁴ "Coercion" means using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

²⁵ Section 943.0583(1)(c), F.S.

²⁶ Section 943.0583(3), F.S.; Chapter 2013-99, L.O.F.

or at the direction of an operator of the scheme.²⁷ The standard of proof in a petition for expungement is a preponderance of the evidence.

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.²⁸ A criminal history record ordered expunged under s. 943.0583, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.²⁹

Section 943.0583(10), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.³⁰

During the 2017 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Florida Court Clerks and Comptrollers, and the Florida Prosecuting Attorney's Association as part of its review of s. 943.0583, F.S.

A total of 33 orders for expunction have been processed by the FDLE since 2014.³¹ Specifically, the orders, by year, processed by the FDLE were:

- 1 in 2014;
- 12 in 2015;
- 6 in 2016; and
- 14 to date in 2017.³²

²⁷ Section 943.0583(3), F.S., does not allow the following offenses to be expunged: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

²⁸ Section 943.045(16), F.S.

²⁹ Section 943.0583(10), F.S.

³⁰ Chapter 2013-99, L.O.F.

³¹ Email from Ronald E. Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Staff (Oct. 19, 2017) (on file with the Senate Criminal Justice Committee and the Senate Governmental Oversight and Accountability Committee).

³² *Id.*

Professional staff from the Senate and the House attempted to ascertain if any victims of human trafficking were experiencing hurdles in the petition process. The Florida Court Clerks and Comptrollers and the Florida Prosecuting Attorney's Association were unaware of any issues.

III. Effect of Proposed Changes:

SB 7000 provides an Open Government Sunset Review of a public records exemption that protects from disclosure certain criminal history records of victims of human trafficking.

The original public necessity statement for the bill provides that victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crimes. Moreover, without the public records exemption, these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Additionally, since the time that the law passed enabling victims of human trafficking to seek an expunction of a criminal record, FDLE has processed 33 orders of expunction. Therefore, for these reasons the bill reenacts the public records exemption.

This bill deletes the scheduled repeal of the current public records exemption for court-ordered expunged criminal history records of human trafficking victims. If the bill passes, these records will continue to be confidential and exempt from public disclosure.

The bill requires a majority vote for passage.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 records exemption. If an 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. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0583 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-01288-18

20187000__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 943.0583, F.S., relating to an exemption from public records requirements for certain criminal history records ordered expunged which are retained by the Department of Law Enforcement; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 943.0583, Florida Statutes, is amended to read:

943.0583 Human trafficking victim expunction.—

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

(a) "Human trafficking" has the same meaning as provided in s. 787.06.

(b) "Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

(c) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

(2) Notwithstanding any other provision of law, upon the filing of a petition as provided in this section, any court in the circuit in which the petitioner was arrested, so long as the

Page 1 of 7

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

591-01288-18

20187000__

court has jurisdiction over the class of offense or offenses sought to be expunged, may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements of this section. A petition need not be filed in the court where the petitioner's criminal proceeding or proceedings originally occurred. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the discretion of the court.

(3) A person who is a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847, without regard to the disposition of the arrest or of any charges. However, this section does not apply to any offense listed in s. 775.084(1)(b)1. Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. If a person is adjudicated not guilty by reason of insanity or is found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national

Page 2 of 7

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

59 591-01288-18 20187000__
 60 databases for use in determining eligibility to purchase or
 61 possess a firearm or to carry a concealed firearm, as authorized
 62 in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it
 63 prevent any governmental agency that is authorized by state or
 64 federal law to determine eligibility to purchase or possess a
 65 firearm or to carry a concealed firearm from accessing or using
 66 the record of the judgment or finding in the course of such
 67 agency's official duties.

68 (4) A petition under this section must be initiated by the
 69 petitioner with due diligence after the victim has ceased to be
 70 a victim of human trafficking or has sought services for victims
 71 of human trafficking, subject to reasonable concerns for the
 72 safety of the victim, family members of the victim, or other
 73 victims of human trafficking that may be jeopardized by the
 74 bringing of such petition or for other reasons consistent with
 75 the purpose of this section.

76 (5) Official documentation of the victim's status creates a
 77 presumption that his or her participation in the offense was a
 78 result of having been a victim of human trafficking but is not
 79 required for granting a petition under this section. A
 80 determination made without such official documentation must be
 81 made by a showing of clear and convincing evidence.

82 (6) Each petition to a court to expunge a criminal history
 83 record is complete only when accompanied by:

84 (a) The petitioner's sworn statement attesting that the
 85 petitioner is eligible for such an expunction to the best of his
 86 or her knowledge or belief and does not have any other petition
 87 to expunge or any petition to seal pending before any court.

(b) Official documentation of the petitioner's status as a

88 591-01288-18 20187000__
 89 victim of human trafficking, if any exists.

90 Any person who knowingly provides false information on such
 91 sworn statement to the court commits a felony of the third
 92 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 93 775.084.

94 (7) (a) In judicial proceedings under this section, a copy
 95 of the completed petition to expunge shall be served upon the
 96 appropriate state attorney or the statewide prosecutor and upon
 97 the arresting agency; however, it is not necessary to make any
 98 agency other than the state a party. The appropriate state
 99 attorney or the statewide prosecutor and the arresting agency
 100 may respond to the court regarding the completed petition to
 101 expunge.

102 (b) The petitioner or the petitioner's attorney may appear
 103 at any hearing under this section telephonically, via video
 104 conference, or by other electronic means.

105 (c) The court shall allow an advocate from a state
 106 attorney's office, law enforcement agency, safe house or safe
 107 foster home as defined in s. 409.1678(1), or a residential
 108 facility offering services to adult victims of human trafficking
 109 to be present with the petitioner during any court proceedings
 110 or hearings under this section, if the petitioner has made such
 111 a request and the advocate is able to be present.

112 (d) If relief is granted by the court, the clerk of the
 113 court shall certify copies of the order to the appropriate state
 114 attorney or the statewide prosecutor and the arresting agency.
 115 The arresting agency is responsible for forwarding the order to
 116 any other agency listed in the court order to which the

591-01288-18 20187000__

117 arresting agency disseminated the criminal history record
 118 information to which the order pertains. The department shall
 119 forward the order to expunge to the Federal Bureau of
 120 Investigation. The clerk of the court shall certify a copy of
 121 the order to any other agency that the records of the court
 122 reflect has received the criminal history record from the court.

123 (8) (a) Any criminal history record of a minor or an adult
 124 that is ordered expunged pursuant to this section must be
 125 physically destroyed or obliterated by any criminal justice
 126 agency having custody of such record, except that any criminal
 127 history record in the custody of the department must be retained
 128 in all cases.

129 (b) The person who is the subject of a criminal history
 130 record that is expunged under this section may lawfully deny or
 131 fail to acknowledge the arrests covered by the expunged record,
 132 except when the subject of the record is a candidate for
 133 employment with a criminal justice agency or is a defendant in a
 134 criminal prosecution.

135 (c) Subject to the exceptions in paragraph (b), a person
 136 who has been granted an expunction under this section may not be
 137 held under any law of this state to commit perjury or to be
 138 otherwise liable for giving a false statement by reason of such
 139 person's failure to recite or acknowledge an expunged criminal
 140 history record.

141 (9) Any reference to any other chapter, section, or
 142 subdivision of the Florida Statutes in this section constitutes
 143 a general reference under the doctrine of incorporation by
 144 reference.

145 (10) ~~(a)~~ A criminal history record ordered expunged under

591-01288-18 20187000__

146 this section that is retained by the department is confidential
 147 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 148 Constitution, except that the record shall be made available to
 149 criminal justice agencies for their respective criminal justice
 150 purposes and to any governmental agency that is authorized by
 151 state or federal law to determine eligibility to purchase or
 152 possess a firearm or to carry a concealed firearm for use in the
 153 course of such agency's official duties. Otherwise, such record
 154 shall not be disclosed to any person or entity except upon order
 155 of a court of competent jurisdiction. A criminal justice agency
 156 may retain a notation indicating compliance with an order to
 157 expunge.

158 ~~(b) This subsection is subject to the Open Government
 159 Sunset Review Act in accordance with s. 119.15 and shall stand
 160 repealed on October 2, 2018, unless reviewed and saved from
 161 repeal through reenactment by the Legislature.~~

162 (11) (a) The following criminal intelligence information or
 163 criminal investigative information is confidential and exempt
 164 from s. 119.07(1) and s. 24(a), Art. I of the State
 165 Constitution:

166 1. Any information that reveals the identity of a person
 167 who is a victim of human trafficking whose criminal history
 168 record has been expunged under this section.

169 2. Any information that may reveal the identity of a person
 170 who is a victim of human trafficking whose criminal history
 171 record has been ordered expunged under this section.

172 (b) Criminal investigative information and criminal
 173 intelligence information made confidential and exempt under this
 174 subsection may be disclosed by a law enforcement agency:

591-01288-18

20187000__

175 1. In the furtherance of its official duties and
176 responsibilities.

177 2. For print, publication, or broadcast if the law
178 enforcement agency determines that such release would assist in
179 locating or identifying a person that the agency believes to be
180 missing or endangered. The information provided should be
181 limited to that needed to identify or locate the victim.

182 3. To another governmental agency in the furtherance of its
183 official duties and responsibilities.

184 (c) This exemption applies to such confidential and exempt
185 criminal intelligence information or criminal investigative
186 information held by a law enforcement agency before, on, or
187 after the effective date of the exemption.

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

192 Section 2. This act shall take effect July 1, 2018.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7002

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Active Criminal Intelligence or Criminal Investigative Information

DATE: January 9, 2018

REVISED: 1/10/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Erickson</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u></u>	<u></u>	<u>RC</u>	

I. Summary:

SB 7002 provides an Open Government Sunset Review for certain portions of a meeting held by a duly constituted criminal justice commission. Specifically, the current public meetings exemption applies to those portions of a meeting at which members discuss active criminal intelligence information or active criminal investigative information that could foreseeably be considered, or is currently being considered by the commission. A duly constituted criminal justice commission is an advisory commission created by local ordinance to examine local criminal justice issues.

The original public necessity statement for the bill provides that without the public meetings exemption, the purpose of the public records exemption for criminal investigative information could be defeated. Further, members must be able to freely discuss exempt information to make sound recommendations on strategies and actions that best protect public welfare. Although only two surveyed counties indicate that they have a duly constituted criminal justice commission, the justification upon which the public records exemption is based remains valid. For this reason, the bill reenacts the public meetings exemption.

If the bill passes, this information will continue to be exempt from public meetings.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule

important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.
¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

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

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

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.²⁵ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³² or
- It protects trade or business secrets.³³

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁵ 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.³⁶

Open Government Sunset Review of the Public Meetings Exemption for a Closed Portion of a Designated Criminal Justice Commission

Active criminal intelligence information³⁷ and active criminal investigative information³⁸ are exempt from public disclosure.³⁹

In 2013, the Legislature created s. 286.01141, F.S.⁴⁰ Section 286.01141(2), F.S., closes from the public the portion of a meeting of a duly constituted criminal justice commission⁴¹ at which members of the commission discuss active criminal intelligence information or active criminal

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S. Section 119.011(3)(c), F.S., provides that certain information is not criminal intelligence information, such as the time, date, location, and nature of a reported crime. Criminal intelligence information is “active”: (1) as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities; or (2) while such information is directly related to pending prosecutions or appeals. Section 119.011(3)(d), F.S. The word “active” does not apply to information in cases which are barred from prosecution under the applicable statute of limitation. *Id.*

³⁸ “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance (s. 119.011(3)(b), F.S.). Section 119.011(3)(c), F.S., provides that certain information is not criminal investigative information, such as the time, date, location, and nature of a reported crime. Criminal investigative information is “active”: (1) as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future; or (2) while such information is directly related to pending prosecutions or appeal (s. 119.011(3)(d), F.S.). The term “active” does not apply to information in cases which are barred from prosecution under the applicable statute of limitation. *Id.*

³⁹ Section 119.071(2)(c)1., F.S.

⁴⁰ Chapter 2013-196, L.O.F.

⁴¹ A “Duly constituted criminal justice commission” is an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues (s. 286.01141(1)(a), F.S.).

investigative information that is currently being considered by, or which may foreseeably come before the commission. Section 286.01141(2), F.S., also requires a criminal justice commission to publicly disclose that it discussed this type of information in the closed portion of a public meeting. This public meetings exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.⁴²

In creating the exemption, the Legislature articulated the following reasons for the exemption:

It is the finding of the Legislature that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.⁴³

Open Government Sunset Review Survey

In conducting the OGSR, staff with the Senate Committee on Criminal Justice and the House Oversight, Transparency & Administration Subcommittee distributed a survey to counties and municipalities.⁴⁴ Twenty survey responses were received. Two respondents, Miami-Dade County and Palm Beach County indicated in their survey responses that they have a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S.

The Dade-Miami Criminal Justice Council was created in 1978 and codified via ordinance in February 2014⁴⁵:

⁴² Section 286.01141(3), F.S.

⁴³ Section 2, ch. 2013-196, L.O.F.

⁴⁴ The survey and responses are on file with the Senate Committees on Criminal Justice and Governmental Oversight and Accountability. Unless otherwise indicated, all information relevant to duly constituted criminal justice commissions is from the survey responses. The Florida Association of Counties and the Florida League of Cities assisted legislative staff by distributing the surveys. Counties responding to the survey: Brevard; DeSoto; Escambia; Madison; Miami-Dade; Monroe; Okaloosa; Okeechobee; Palm Beach; Pinellas; Seminole; St. Lucie; Sumter; and Walton. Municipalities responding to the survey: Hampton; Inverness; Lake Helen; Long Boat Key; Sanibel; and St. Petersburg. Staff also contacted the Broward County Crime Commission and determined that the commission was not created by ordinance, and therefore not a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S. The commission is organized as a Florida 501 C-4, non-profit corporation. See <http://www.browardcrime.org/aboutus.html> (last visited on Dec. 14, 2017).

⁴⁵ Miami Dade County Ord. No. 14-17, ss. 1-8, adopted February 4, 2014, did not specify provisions intended for use. For purposes of classification, these provisions were included as Miami-Dade County Code of Ordinances, ch. 2, art. CXLIX,

The general purpose of [the council] is to encourage and facilitate the coordination and cooperation among various agencies and municipalities within Miami-Dade County with crime prevention/intervention strategies, criminal and juvenile justice activities, and other activities related to criminal justice.⁴⁶

The Palm Beach County Criminal Justice Commission was created in 1988 pursuant to an ordinance adopted in 1988.⁴⁷ The commission:

prioritizes its projects at its Annual Planning Meeting in February of each year. The issues discussed at the meetings center around the progress on these priorities which in the past few years have been our reentry program, community engagement, behavioral health issues in the system, body worn camera deployment amongst our local law enforcement agencies, the implementation of a validated risk assessment instrument for pretrial detention decision-making, our jail population and efforts to reduce it, law enforcement information sharing systems, and the Batterers' Intervention Program. In addition, other topics include current legislation and countywide crime statistics.⁴⁸

Neither of the two councils has closed any portion of their meetings to discuss active criminal intelligence information or active criminal investigation information. Because the Dade-Miami Criminal Justice Council has not used the exemption, Miami-Dade County did not render an opinion on whether the exemption should be reenacted. In contrast, Palm Beach County does support reenactment:

While the [Criminal Justice Commission] has never needed to use the exemption, there are always new issues to address. The [Criminal Justice Commission] is committed to data-driven policy-making and may require the exemption for future meetings.⁴⁹

Attorney General Opinion on Exempt Status of Meetings of County Criminal Justice Commission

When asked for an advisory opinion on whether active criminal intelligence and investigative information is exempt from discussions in public meetings, the Attorney General concluded that the exempt status of this information under public records law does not imply an exemption from

ss. 2-2166—2-2173. See https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTCXLIXDAAMCRJUCO_S2-2166CRPU (last visited on Dec. 11, 2017).

⁴⁶ Response from Miami-Dade County to the Staff OGSR Survey.

⁴⁷ Palm Beach County Ord. No. 88-16, adopted Aug. 16, 1988, effective Aug. 29, 1988, amended the Palm Beach County Code of Ordinances by adding provisions designated as Palm Beach Code of Ordinances, ch. 2, art. V, div. 5, ss. 2-216—2-221. See <http://discover.pbcgov.org/criminaljustice/PDF/CJC%20Ordinance.pdf> (last visited on Dec. 14, 2017).

⁴⁸ Response from Palm Beach County to the Staff OGSR Survey.

⁴⁹ *Id.* Subsequent to its survey response, the Palm Beach County Criminal Justice Commission confirmed that the commission approved the recommendation to reenact the exemption, which was pending approval by the commission at the time the survey response was received. E-mail from Kristina Henson, Executive Director of the Palm Beach County Criminal Justice Commission (Oct. 2, 2017) (on file with the Senate Committees on Criminal Justice and Governmental Oversight and Accountability).

the public meetings requirement of s. 286.011, F.S. As such, an exemption from the public meetings requirement must be expressly provided.⁵⁰

III. Effect of Proposed Changes:

The bill provides an Open Government Sunset Review for certain portions of a meeting held by a duly constituted criminal justice commission. Specifically, the current public meetings exemption applies to those portions of a meeting at which members discuss active criminal intelligence information or active criminal investigative information that could foreseeably be considered, or is currently being considered by the commission. A duly constituted criminal justice commission is an advisory commission created by local ordinance to examine local criminal justice issues.

The original public necessity statement for the bill provides that without the public meetings exemption, the purpose of the public records exemption for criminal investigative information could be defeated. Further, members must be able to freely discuss exempt information to make sound recommendations on strategies and actions that best protect public welfare.

Reenacting the public meetings exemption would allow for a duly constituted criminal justice commission to discuss active criminal intelligence information or active criminal investigation should the need arise for such discussion; repeal of the exemption would preclude such discussion because the commission would not be able to reveal the contents of this type of exempt information in a public meeting.

Although only two surveyed counties indicate that they have a duly constituted criminal justice commission, the justification upon which the public records exemption is based remains valid. For these reasons, the bill reenacts the public meetings exemption.

If the bill passes, this information will continue to be exempt from public meetings.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts an existing public records exemption for the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before,

⁵⁰ Fla. AGO 93-41 (June 7, 1993).

the commission. A simple majority vote of the members present in each house of the Legislature is required for passage of the bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.01141 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-01287-18

20187002__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 286.01141, F.S., which
 4 provides an exemption from public meetings
 5 requirements for portions of a meeting of a duly
 6 constituted criminal justice commission at which
 7 active criminal intelligence information or active
 8 criminal investigative information being considered
 9 by, or which may foreseeably come before, the
 10 commission is discussed; removing the scheduled repeal
 11 of the exemption; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 286.01141, Florida Statutes, is amended
 16 to read:
 17 286.01141 Criminal justice commissions; public meetings
 18 exemption.—
 19 (1) As used in this section, the term:
 20 (a) "Duly constituted criminal justice commission" means an
 21 advisory commission created by municipal or county ordinance
 22 whose membership is comprised of individuals from the private
 23 sector and the public sector and whose purpose is to examine
 24 local criminal justice issues.
 25 (b) "Active" has the same meaning as provided in s.
 26 119.011.
 27 (c) "Criminal intelligence information" has the same
 28 meaning as provided in s. 119.011.
 29 (d) "Criminal investigative information" has the same

Page 1 of 2

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

591-01287-18

20187002__

30 meaning as provided in s. 119.011.
 31 (2) That portion of a meeting of a duly constituted
 32 criminal justice commission at which members of the commission
 33 discuss active criminal intelligence information or active
 34 criminal investigative information that is currently being
 35 considered by, or which may foreseeably come before, the
 36 commission is exempt from s. 286.011 and s. 24(b), Art. I of the
 37 State Constitution, provided that at any public meeting of the
 38 criminal justice commission at which such matter is being
 39 considered, the commission members publicly disclose the fact
 40 that the matter has been discussed.
 41 ~~(3) This section is subject to the Open Government Sunset~~
 42 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 43 ~~on October 2, 2018, unless reviewed and saved from repeal~~
 44 ~~through reenactment by the Legislature.~~
 45 Section 2. This act shall take effect October 1, 2018.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7008

INTRODUCER: Communications, Energy, and Public Utilities Committee

SUBJECT: OGSR/Local Government Electric Utility

DATE: January 9, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Wiehle	Caldwell		CU Submitted as Committee Bill
1.	Caldwell	Caldwell	GO	Favorable
2.			RC	

I. Summary:

SB 7008 removes the scheduled repeal of the public records exemption for proprietary confidential business information held by a local government electric utility, thus continuing the exemption from disclosure requirements under the public records laws. The bill takes effect on October 1, 2018.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

⁵ Section 119.01(1), F.S.

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

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

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

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

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

Section 119.0713(4), F.S. – Exemption of Proprietary Confidential Business Information Held by a Local Government Electric Utility

In 2013, the Legislature created s. 119.0713(4), F.S., to exempt from the public record requirements proprietary confidential business information held by a local government electric utility in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The term “proprietary confidential business information” means information, regardless of form or characteristics, which:

- is held by an electric utility that is subject to chapter 119, F.S.;
- is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations; and
- has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

The term “proprietary confidential business information” includes, but is not limited to:

- Trade secrets.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

This public record exemption stands repealed on October 2, 2018, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, F.S.).

Open Government Sunset Review of Exemption

Accordingly, in the summer of 2017, Senate and House committee staff conducted a survey of Florida local government electric utilities relating to their use of the exemption. Six entities responded: JEA (previously Jacksonville Electric Authority), Orlando Utilities Commission (OUC), Kissimmee Utility Authority (KUA), Lakeland Electric (LE), City of Leesburg Electric Department (LED), and Florida Municipal Power Agency (FMPA).^{23, 24}

²³ Responses are on file with the Senate Committee on Communications, Energy, and Public Utilities.

²⁴ While there are 34 municipal electric utilities, only 13 of these utilities generate electricity. Florida Public Service Commission, *2017 Facts and Figures of the Florida Utilities Industry*, page 11

<http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/March%202017.pdf>

Also, the projects that this public records exemption addresses involve the acquisition of large scale facilities, are very expensive, and don't happen often. Finally, the FMPA represents the collective interests of 13 municipal electric utilities, and its response is considered a response for all 13 utilities. Collectively, then, 19 municipal utilities responded. Amy Zubaly, email to Diana Caldwell (September 6, 2017).

The statute applies to a local government electric utility that holds proprietary confidential business information in conjunction with either a due diligence review²⁵ of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. An electric project includes:

- Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
- Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
- Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to above.²⁶

Types of projects include construction, acquisition, maintenance, or upgrading of electricity generating facilities, transmission or distribution power lines, operating systems, or storage facilities. Projects may involve traditional fuels or new sources, such as solar; traditional forms of transmission, distribution, and metering equipment or new equipment, such as smart meters and components of a smart grid; and new storage technologies, such as Li-Ion batteries and Vanadium Flow battery systems. Project goals may include: producing and delivering electricity to meet increased demands; increasing efficiency and cutting costs; or improving technologies to obtain purely economic or socioeconomic advantages.

A business may provide project proposals and related information to a municipal utility either pursuant to a utility announcement of a project and issuance of a Request for Proposals, or through an unsolicited business proposal. These proposals may be made by other electric utilities or designers or manufacturers of equipment or systems. Typically proposals include:

- Technical specifications, data, plans, drawings, and design information about the equipment, technology, and systems being proposed; and
- Terms and conditions, including identification and quantification of benefits to be provided and pricing information.

Much of this information is either patented, proprietary, or confidential.

The Legislature enacted the exemption statute based on a finding that it was a public necessity that this information be made confidential and exempt from public records requirements because the disclosure of this information could injure the provider in the marketplace by giving its competitors detailed insight into its financial status and strategic plans, thereby putting the provider at a competitive disadvantage. Without this exemption, providers might be unwilling to enter into discussions with the electric utility regarding the feasibility of future contracting. This

²⁵ A due diligence review is an investigation and review of the business seeking the contract and of their financial and technical resources to fulfill the contract, of the proposal itself, and of the costs associated with the proposal, including ratepayer impacts.

²⁶ Section 163.01(3)(d), F.S.

could, in turn, limit opportunities the electric utility might otherwise have for finding cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This would put public providers of electric utility services at a competitive disadvantage by limiting their ability to optimize services to their customers and adversely affecting the customers of those utilities by depriving them of opportunities for rate reductions or other improvements in services. The Legislature also found that the public and private harm in disclosing such proprietary confidential business information significantly outweighed any public benefit derived from disclosure of the information and that the exemption would enhance the ability of electric utilities to optimize their performance, thereby benefiting ratepayers.

The survey responses reflect that these findings are borne out in these utilities' operations. Prior to enactment of the exemption, some of the responding utilities were able to enter into contracts by using a due diligence process in which no documents came into the utility's possession, using third party providers of due diligence services, or using detailed nondisclosure agreements. They note, however, that businesses have become more willing to make proposals and enter into agreements since the exemption was enacted, particularly with new or emerging technology such as solar energy and battery storage. Respondents also stated that the protected information could not be readily obtained by alternative means and that it was not protected by any other exemption. As such, all recommend retaining the exemption in its current form.

Based on this information, the exemption both protects confidential business information related to competitiveness and allows these governmental utilities to effectively and efficiently produce and deliver electricity to their customers, and these services would be significantly impaired without the exemption. The purpose appears sufficient to override public policy favoring open government, and could not be accomplished without the exemption.

III. Effect of Proposed Changes:

The bill amends s. 119.0713(4), F.S., to remove the scheduled repeal of the public records exemption for proprietary confidential business information held by a local government electric utility. As a result, these records will remain exempt from disclosure requirements under public records law.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption allows business entities to propose and negotiate projects with municipal utilities without the risk of disclosure of proprietary confidential business information, which allows these entities to increase their business activities.

The exemption allows municipal utility customers to benefit from anticipated improvements to utility infrastructure and systems.

C. Government Sector Impact:

The exemption allows the municipal utilities to increase the size and efficiency of their electricity generation and delivery infrastructure, utilize newer technologies, and reduce costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First Amendment Foundation conducted its annual review of exemptions from public records subject to review during the 2018 legislative session. It concluded that the public record exemption which this bill maintains “is sufficiently narrow and the Foundation does not object to its reenactment as currently worded.”²⁷

VIII. Statutes Affected:

This bill substantially amends section 119.0713 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.

²⁷ Letter from Barbara A. Peterson, President, First Amendment Foundation, to Senator Dennis Baxley, Chair, Senate Committee on Government Oversight and Accountability (Aug. 17, 2017) (on file with the Senate Governmental Oversight and Accountability Committee).

B. Amendments:

None.

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

By the Committee on Communications, Energy, and Public Utilities

579-01381-18

20187008__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.0713, F.S.,
 4 relating to an exemption from public records
 5 requirements for proprietary confidential business
 6 information held by a local government electric
 7 utility; removing the scheduled repeal of the
 8 exemption; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (4) of section 119.0713, Florida
 13 Statutes, is amended to read:
 14 119.0713 Local government agency exemptions from inspection
 15 or copying of public records.—
 16 (4) (a) Proprietary confidential business information means
 17 information, regardless of form or characteristics, which is
 18 held by an electric utility that is subject to this chapter ~~119~~,
 19 is intended to be and is treated by the entity that provided the
 20 information to the electric utility as private in that the
 21 disclosure of the information would cause harm to the entity
 22 providing the information or its business operations, and has
 23 not been disclosed unless disclosed pursuant to a statutory
 24 provision, an order of a court or administrative body, or a
 25 private agreement that provides that the information will not be
 26 released to the public. Proprietary confidential business
 27 information includes, but is not limited to:
 28 1. Trade secrets.
 29 2. Internal auditing controls and reports of internal

Page 1 of 2

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

579-01381-18

20187008__

30 auditors.
 31 3. Security measures, systems, or procedures.
 32 4. Information concerning bids or other contractual data,
 33 the disclosure of which would impair the efforts of the electric
 34 utility to contract for goods or services on favorable terms.
 35 5. Information relating to competitive interests, the
 36 disclosure of which would impair the competitive business of the
 37 provider of the information.
 38 (b) Proprietary confidential business information held by
 39 an electric utility that is subject to this chapter ~~119~~ in
 40 conjunction with a due diligence review of an electric project
 41 as defined in s. 163.01(3)(d) or a project to improve the
 42 delivery, cost, or diversification of fuel or renewable energy
 43 resources is confidential and exempt from s. 119.07(1) and s.
 44 24(a), Art. I of the State Constitution.
 45 (c) All proprietary confidential business information
 46 described in paragraph (b) shall be retained for 1 year after
 47 the due diligence review has been completed and the electric
 48 utility has decided whether or not to participate in the
 49 project.
 50 ~~(d) This subsection is subject to the Open Government~~
 51 ~~Sunset Review Act in accordance with s. 119.15, and shall stand~~
 52 ~~repealed on October 2, 2018, unless reviewed and saved from~~
 53 ~~repeal through reenactment by the Legislature.~~
 54 Section 2. This act shall take effect October 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/10/18

Meeting Date

SB 7008

Bill Number (if applicable)

Topic OGSR | LOCAL GOV. ELECTRIC UTILITY

Amendment Barcode (if applicable)

Name KEVIN NOONAN

Job Title DIRECTOR, LEGISLATIVE AFFAIRS

Address 100 W. ANDERSON ST

Phone 407.466.1287

Street

ORLANDO FL 32801

Email KNOONAN@OCUC.COM

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing ORLANDO UTILITIES COMMISSION

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/10/18
Meeting Date

SB 7008
Bill Number (if applicable)

Topic OGSR/Local Government Electric Utility

Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title Government Relations Specialist

Address 21 W. Church St.

Phone 904 665-8331

Street

Jacksonville FL 32202

City

State

Zip

Email goss.SE@jea.com

Speaking: For Against Information

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

Representing JEA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/10/18
Meeting Date

7008
Bill Number (if applicable)

Topic OGSR Local Govt Electric Utility

Amendment Barcode (if applicable)

Name Amy Zubaly

Job Title Executive Director

Address 417 E. College
Street

Phone 850.224.3314 x1

Tallahassee FL 32301
City State Zip

Email azubaly@publicpower.com

Speaking: For Against Information

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

Representing Florida Municipal Electric Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7014

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: State-administered Retirement Systems

DATE: January 10, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Caldwell	Caldwell		GO Submitted as Comm.Bill/Fav

I. Summary:

SPB 7014 establishes the contribution rates paid by employers participating in the Florida Retirement System (FRS) beginning July 1, 2018. These rates are intended to fund the full normal cost and the amortization of the unfunded actuarial liability of the FRS. With these modifications to employer contribution rates, the FRS Trust Fund will receive roughly \$178.5 million more in revenue on an annual basis beginning July 1, 2018. The public employers that will incur these additional costs are state agencies, state universities and colleges, school districts, counties, and certain municipalities and other governmental entities.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2017, the FRS had 637,643 active members, 406,374 annuitants, 16,150 disabled retirees, and 32,233 active participants of the Deferred Retirement

¹ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 33. Available online at: https://www.rol.frs.state.fl.us/forms/2016-17_CAFR.pdf. (Last visited January 3, 2018.)

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

Option Program (DROP).³ As of June 30, 2017, the FRS consisted of 995 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 260 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 552,600 active members, plus 3,116 in renewed membership;
- The Special Risk Class⁶ includes 71,612 active members;
- The Special Risk Administrative Support Class⁷ has 93 active members;
- The Elected Officers' Class⁸ has 2,082 active members, plus 85 in renewed membership; and
- The Senior Management Service Class⁹ has 7,912 members, plus 116 in renewed membership.¹⁰

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of

³ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 144.

⁴ *Id.*, at 180.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 147.

¹¹ Section 121.4501(6)(a), F.S.

employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA CONST. art. IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.²⁷

Contribution Rates

FRS employers are responsible for contributing a specified percentage of the member’s monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.²⁸ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2017, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.²⁹

	Valuation Results (in \$ billions)			
	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
Actuarial Liability	\$160.1	\$165.5	\$170.4	\$178.6
Actuarial Value of Assets	\$138.6	\$143.2	\$145.5	\$150.6
Unfunded Actuarial Liability	\$21.5	\$22.3	\$24.9	\$28.0
Funded Percentage (Actuarial Value of Assets/Actuarial Liability)	86.6%	86.5%	85.4%	84.3%

²⁵ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.70(1), F.S.

²⁹ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at 125.

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize the unfunded actuarial liabilities (UAL) over a thirty year period. The following are the current employer contribution rates³⁰ for each class and the blended rates recommended by the state actuary beginning in July 2018:³¹

Membership Class	Current Rates Effective July 1, 2017		Recommended Rates to be effective July 1, 2018	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	2.90%	3.03%	3.04%	3.500%
Special Risk Class	11.86%	9.69%	12.18%	10.60%
Special Risk Administrative Support Class	3.83%	29.80%	3.64%	29.62%
Elected Officer’s Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.45%	42.69%	6.65%	48.38%
• Justices and Judges	11.67%	26.25%	12.00%	27.05%
• County Officers	8.54%	35.24%	8.50%	38.48%
Senior Management Service Class	4.29%	16.70%	4.45%	17.89%
Deferred Retirement Option Program	4.17%	7.96%	4.41%	7.96%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.³²

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.³³

III. Effect of Proposed Changes:

The bill modifies the employer-paid contributions for FRS retirement benefits.

Section 1 amends s. 121.71, F.S., to set the employer-paid contributions to the Florida Retirement System Trust Fund for each membership class of the FRS. The bill also updates the required employer retirement contribution rates for each membership class to address the unfunded actuarial liabilities.

³⁰ Section 121.71(4) and (5), F.S.

³¹ Letter to Ms. Elizabeth Stevens, *Re: Blended Proposed Statutory Rates for the 2018-2019 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 6, 2017 (on file with the Senate Committee on Governmental Accountability and Oversight).

³² Section 121.71(3), F.S.

³³ See ss. 121.4503 and 121.72(1), F.S.

Section 2 provides findings that the bill fulfills an important state interest.

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated...”

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, community colleges, counties, and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida Retirement System

The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2018-2019 will increase by approximately \$178.5 million when compared to the employer contributions paid in Fiscal Year 2017-2018. The impacts by employer group for Fiscal Year 2018-2019 are noted below.

Employer Group	Additional Contributions
State Agencies	\$31.0 m
Universities	\$11.8 m
Colleges	\$4.8 m
School Boards	\$54.4 m
Counties	\$66.4 m
Other	\$10.1 m
Total	\$178.5 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.71 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

585-01869A-18 20187014pb

1 A bill to be entitled
 2 An act relating to state-administered retirement
 3 systems; amending s. 121.71, F.S.; revising required
 4 employer retirement contribution rates for each
 5 membership class and subclass of the Florida
 6 Retirement System; providing a declaration of
 7 important state interest; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Subsections (4) and (5) of section 121.71,
 12 Florida Statutes, are amended to read:
 13 121.71 Uniform rates; process; calculations; levy.-
 14 (4) Required employer retirement contribution rates for
 15 each membership class and subclass of the Florida Retirement
 16 System for both retirement plans are as follows:
 17

	Percentage of Gross Compensation, Effective
Membership Class	July 1, <u>2018</u> 2017
Regular Class	<u>3.04%</u> 2.90%
Special Risk Class	<u>12.18%</u> 11.86%

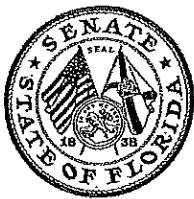
585-01869A-18 20187014pb

Special Risk
 Administrative
 Support Class 3.64% ~~3.83%~~
 22
 Elected Officers' Class-
 Legislators, Governor,
 Lt. Governor,
 Cabinet Officers,
 State Attorneys,
 Public Defenders 6.65% ~~6.45%~~
 23
 Elected Officers' Class-
 Justices, Judges 12.00% ~~11.67%~~
 24
 Elected Officers' Class-
 County Elected Officers 8.50% ~~8.54%~~
 25
 Senior Management Class 4.45% ~~4.29%~~
 26
 DROP 4.41% ~~4.17%~~
 27
 28 (5)
 29 In order to address unfunded actuarial liabilities of the
 30 system, the required employer retirement contribution rates for
 31 each membership class and subclass of the Florida Retirement
 32 System for both retirement plans are as follows:
 33
 34

	Percentage of
Membership Class	

	585-01869A-18	20187014pb
	Gross Compensation, Effective July 1, <u>2018</u> 2017	
35		
36		
37	Regular Class	<u>3.50%</u> 3.30%
38	Special Risk Class	<u>10.60%</u> 9.69%
39	Special Risk Administrative Support Class	<u>29.62%</u> 29.08%
40	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	<u>48.38%</u> 42.69%
41	Elected Officers' Class— Justices, Judges	<u>27.05%</u> 26.25%
42	Elected Officers' Class— County Elected Officers	<u>38.48%</u> 35.24%
	Senior Management Service	<u>17.89%</u> 16.70%

	585-01869A-18	20187014pb
	Class	
43		
44	DROP	<u>7.96%</u> 7.43%
45	Section 2. <u>The Legislature finds that a proper and</u>	
46	<u>legitimate state interest is served when employees, officers,</u>	
47	<u>and retirees of the state and its political subdivisions, and</u>	
48	<u>the dependents, survivors, and beneficiaries of such employees,</u>	
49	<u>officers, and retirees, are extended the basic protections</u>	
50	<u>afforded by governmental retirement systems. These persons must</u>	
51	<u>be provided benefits that are fair and adequate and that are</u>	
52	<u>managed, administered, and funded in an actuarially sound</u>	
53	<u>manner, as required by s. 14, Article X of the State</u>	
54	<u>Constitution and part VII of chapter 112, Florida Statutes.</u>	
55	<u>Therefore, the Legislature determines and declares that this act</u>	
56	<u>fulfills an important state interest.</u>	
57	Section 3. This act shall take effect July 1, 2018.	



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KEVIN J. RADER
29th District

COMMITTEES:

Agriculture, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Governmental Oversight and Accountability
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee,
Alternating Chair

December 21, 2017

The Honorable Dennis Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chairman Baxley:

In accordance with Senate Rule 1.21, I am writing to you to be excused from the Governmental Oversight and Accountability Committee meeting that will be held on January 10, 2018 at 9:00am due to business matters that need my immediate attention. I sincerely apologize for any inconvenience this may cause.

Thank you for your consideration. Please feel free to contact me at 561-866-4020 if you have any questions.

Sincerely

A handwritten signature in cursive script that reads "Kevin Rader".

Kevin Rader
State Senator
District 29

cc: Diana Caldwell, Staff Director

Handwritten initials "OK - RFB" with a horizontal line underneath.

REPLY TO:

- 5301 N. Federal Hwy, Suite 135, Boca Raton, Florida 33487
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Committee on Governmental Oversight and Accountability

Judge:

Started: 1/10/2018 9:05:39 AM

Ends: 1/10/2018 9:49:12 AM

Length: 00:43:34

9:05:42 AM Meeting called to order by Chair Baxley
9:05:54 AM Quorum present
9:06:01 AM Senator Rader is excused
9:06:08 AM Comments by Chair
9:06:30 AM Tab 9 - SB 7008 - by Criminal Justice Committee, presented by Sen. Bean, OGSR/Local Government Electric Utility.
9:07:06 AM Questions on bill? None.
9:07:14 AM Kevin Noonan, Director, Leg. Affairs, Orlando Utilities Commission, waives in support
9:07:21 AM Susane Goss, Gov. Relations Specialist, JEA, Jacksonville, waives in support
9:07:31 AM Amy Zubaly, Exec. Director, Fla. Municipal Electric Assoc., waives in support.
9:07:36 AM Debate? None.
9:07:41 AM Sen. Bean waives to close
9:07:57 AM Roll call on SB 7008 - favorable
9:08:03 AM Chair
9:08:22 AM Tab 1 - SB 424 - Sen Gibson, Public Records and Public Meetings/Elder Abuse Fatality Review
9:09:07 AM Strike all amendment 900002 by Gibson
9:09:22 AM Any Questions on the strike all amendment? None.
9:09:36 AM Any objections on strike all amendment? None.
9:09:44 AM Questions on bill as amended? Seeing no questions or objections on the bill as amended we are back on the bill as amended.
9:09:52 AM Linda Levin, Exec. Dir., Elder Service, waives in support.
9:10:05 AM No debate on bill as amended.
9:10:10 AM Sen. Gibson waives to close.
9:10:26 AM Roll Call on CS/SB 424 - favorable
9:10:44 AM Tab 2 - SB 560 by Sen. Steube, Public Records and Public Meetings/Elder Abuse Fatality Review
9:12:08 AM Any questions on bill?
9:12:57 AM Senator Stewart question. After reading the last lines of this bill and after talking with the Senate Office of Insurance Regulation, I am concerned with background that would allow someone with sexual harassment and a child being identified with this. Hand written amendment.
9:13:32 AM Hand written amendment by Sen. Stewart
9:13:43 AM Chair - would you like to handle in Rule?
9:13:54 AM Sen. Steube would like to see amendment
9:14:42 AM Sen. Steube and Sen. Stewart discuss amendment
9:15:04 AM Chair wants it to be right - offer at next committee stop
9:15:22 AM Sen. Stewart and Sen. Steube agree
9:15:24 AM Chair
9:15:41 AM Questions on bill? None
9:15:53 AM Ellyn Bogdanoff, City of Miami, waives in support
9:16:17 AM Scott Dudley, Leg. Director, Fla. League of Cities, waives in support
9:16:19 AM Chair
9:16:37 AM Any debate? None
9:16:52 AM Sen. Steube waives to close.
9:17:00 AM Roll call on SB 560 - favorable
9:17:06 AM Chair addresses concerns to make sure amendment will be taken care of at the next stop.
9:17:26 AM Tab 3- SB 608 by Senator Passidomo, Public Records/Identity Theft and Fraud Protection Act.
9:20:50 AM Sen. Rouson question specifics of concerns of First Amendment Foundation.
9:21:53 AM Sen. Passidomo has received a letter and spoken with group.
9:21:57 AM Questions?
9:22:12 AM Sen. Rouson any one here from First Amendment Foundation here today. None are here.
9:22:22 AM Chair - Questions. None
9:22:27 AM Appearance cards? None.
9:22:28 AM Debate? None.

9:22:35 AM Senator Passidomo waives to close.
9:22:38 AM Roll Call - SB 608 - favorable
9:23:01 AM Tab 4 - SB 750 by Sen. Perry, Public Records
9:26:17 AM Chair - questions?
9:26:35 AM Sen. Stewart is recognized.
9:27:08 AM Sen. Rouson, has Fla. Justice Association waded in on this?
9:27:18 AM Response by Senator Perry.
9:27:25 AM Chair - Questions? None
9:27:33 AM Scott Dudley, Florida League of Cities, to speak against the bill.
9:31:05 AM Sen. Perry closes on bill.
9:32:02 AM Sen. Rouson. Concern with Fla. Assoc. of Counties and working with them on issues.
9:32:25 AM Sen. Perry in response
9:32:33 AM Chair
9:32:46 AM Roll Call on SB 750 - favorable
9:33:18 AM Chair
9:33:48 AM Tab 7 - SB 7000 by Criminal Justice, Criminal History Records/Dept. of Law Enforcement, presented by
Sen. Bracy
9:34:06 AM Questions? None
9:34:11 AM Appearance Cards? None.
9:34:14 AM Debate? None.
9:34:17 AM Sen. Bracy waives to close
9:34:28 AM Roll Call on SB 7000 - Favorable
9:35:01 AM Tab 8 - SB 7008 - Criminal Justice, presented by Sen. Bracy, OGSR/Active Criminal Intelligence or
Criminal Investigative Information
9:35:07 AM Questions? None
9:35:13 AM Appearance? None
9:35:18 AM Debate? None
9:35:24 AM Sen. Bracy waives to close
9:35:33 AM Roll Call on SB 7002 - favorable
9:35:57 AM Tab 5 - SB 826 by Sen. Hukill, Taxpayers' Rights Advocate
9:38:57 AM Strike all amendment - # 348024
9:39:02 AM Questions? None
9:39:09 AM Appearance Cards? None
9:39:13 AM Debate? None
9:39:26 AM Objections to amendment? None. Back on the bill as amended. Amendment is adopted
9:39:34 AM Questions on Bill? None
9:40:06 AM Kurt Wenner, VP, Fla. Taxwatch. Speaking for the bill.
9:40:44 AM Tim Nungesser, Leg. Director, National Fed. of Indep. Business, waives in support
9:40:49 AM Any debate? None.
9:40:57 AM Sen. Hukill waives to close
9:41:17 AM Roll Call on CS/SB 826 as amended - favorable
9:41:51 AM Tab 6 - SB 950 by Senator Mayfield, State Employment
9:43:05 AM Questions? None.
9:43:10 AM Appearance Cards
9:43:15 AM Meredith Stanfield, Dept. of Mgmt. Services, waives in support.
9:43:31 AM Jessica Scher, Public Policy Director, United Way of Miami -Dade, waives in opposition
9:43:36 AM Debate? None.
9:43:40 AM Sen. Mayfield waives to close.
9:43:54 AM Roll call on SB 950 - favorable
9:44:10 AM Chair comments on SB 950 and United Way.
9:44:59 AM Tab 10 - SPB 7014, State-administered Retirement Systems, presented by Diana Caldwell, Staff
Director
9:46:31 AM Chair - more explanation of the bill.
9:47:18 AM Questions? None.
9:47:24 AM Appearance Cards? None
9:47:29 AM Debate? None.
9:47:40 AM Sen. Stargel moves to make SPB 7-14 be submitted as a committee bill.
9:47:57 AM Roll call on SPB 7014 - Favorable as a committee bill
9:48:14 AM Sen. Galvano would like to be shown as voting favorable on Tabs 1, 2 and 9.
9:48:25 AM Sen. Rouson, would like to be shown as voting favorable on Tab 1 SB 424 and Tab 6 SB 950.
9:48:30 AM Chair, any other business?
9:49:06 AM Vice Chair Mayfield moves we adjourn.