

Tab 1	SB 220 by Cruz (CO-INTRODUCERS) Gibson, Rouson; (Identical to H 00121) Abandoned Cemeteries					
156020	D	S	RCS	GO, Cruz	Delete everything after	12/09 03:32 PM
181220	AA	S	RCS	GO, Hooper	Delete L.89 - 138:	12/09 03:32 PM

Tab 2	SB 374 by Rouson; (Identical to H 00175) Housing Discrimination					
--------------	--	--	--	--	--	--

Tab 3	SB 726 by Rouson; (Similar to H 00255) Florida Commission on Human Relations					
--------------	---	--	--	--	--	--

Tab 4	SB 830 by Benacquisto; (Compare to H 00887) OGSR/Certain Personal Financial and Health Information					
--------------	---	--	--	--	--	--

Tab 5	SB 7004 by FT; (Identical to H 07007) OGSR/Taxpayer E-mail Addresses Held by a Tax Collector					
--------------	---	--	--	--	--	--

Tab 6	SB 7008 by ED; OGSR/Animal Medical Records/State College of Veterinary Medicine					
--------------	--	--	--	--	--	--

Tab 7	SB 444 by Rader; Customer Service Standards for State Agencies					
--------------	---	--	--	--	--	--

Tab 8	SB 248 by Hooper; (Identical to H 00063) Public Records/County Attorneys and Assistant County Attorneys					
--------------	--	--	--	--	--	--

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Monday, December 9, 2019

TIME: 1:30—3:30 p.m.

PLACE: 301 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 220 Cruz (Identical H 121)	Abandoned Cemeteries; Creating the Task Force on Abandoned African-American Cemeteries; requiring the Department of State to partner with the University of South Florida to undertake an investigation of the former Zion Cemetery site; requiring the department to contract with the university for the identification and location of eligible next of kin of certain persons, etc. GO 12/09/2019 Fav/CS ATD AP	Fav/CS Yeas 4 Nays 0
2	SB 374 Rouson (Identical H 175)	Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice, etc. JU 11/05/2019 Favorable GO 12/09/2019 Favorable RC	Favorable Yeas 5 Nays 0
3	SB 726 Rouson (Similar H 255, Compare S 450)	Florida Commission on Human Relations; Revising quorum requirements for the Commission on Human Relations and its panels; revising the number of persons the commission must recommend for the Florida Civil Rights Hall of Fame; deleting a requirement that a facility or community that provides housing for older persons register with and submit a letter to the commission; deleting the requirement for the commission or Attorney General to investigate a complaint of discrimination in evaluating an application for club membership, etc. GO 12/09/2019 Favorable JU RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Monday, December 9, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 830 Benacquisto	OGSR/Certain Personal Financial and Health Information; Amending a provision which provides an exemption from public records requirements for certain personal financial and health information held by the Florida Prepaid College Board, Florida ABLE, Inc., or the Florida ABLE program, or an agent or service provider thereof; removing the scheduled repeal of the exemption, etc. GO 12/09/2019 Favorable RC	Favorable Yeas 5 Nays 0
5	SB 7004 Finance and Tax (Identical H 7007)	OGSR/Taxpayer E-mail Addresses Held by a Tax Collector; Amending a provision relating to an exemption from public records requirements for taxpayer e-mail addresses held by a tax collector for certain purposes; removing the scheduled repeal of the exemption, etc. GO 12/09/2019 Favorable RC	Favorable Yeas 5 Nays 0
6	SB 7008 Education	OGSR/Animal Medical Records/State College of Veterinary Medicine; Amending a provision which provides an exemption from public records requirements for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education; removing the scheduled repeal of the exemption, etc. GO 12/09/2019 Favorable RC	Favorable Yeas 5 Nays 0
7	SB 444 Rader	Customer Service Standards for State Agencies; Requiring departments within the executive branch of state government to implement certain measures with respect to telephone calls placed by customers, etc. GO 12/09/2019 Favorable IT RC	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, December 9, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 248 Hooper (Identical H 63)	Public Records/County Attorneys and Assistant County Attorneys; Providing an exemption from public records requirements for the personal identifying and location information of current and former county attorneys and assistant county attorneys and the names and personal identifying and location information of the spouses and children of such attorneys; providing a statement of public necessity, etc. JU 11/05/2019 Favorable GO 12/09/2019 Favorable RC	Favorable Yeas 4 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 220

INTRODUCER: Governmental Oversight and Accountability Committee; and Senator Cruz and others

SUBJECT: Abandoned Cemeteries

DATE: December 10, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 220 creates a seven-member Task Force on Abandoned African-American Cemeteries. The stated purpose of the task force is to study the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and to develop and recommend strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased. The task force is required to review the findings and recommendations made by the Task Force on Abandoned and Neglected Cemeteries created pursuant to chapter 98-268, Laws of Florida, and to make recommendations regarding the creation, placement, and maintenance of memorials at the sites of the former Zion Cemetery and the Ridgewood Cemetery in Tampa. The Department of State (DOS) must provide administrative and staff support relating to the functions of the task force. The task force must submit a report by March 1, 2021, that details its findings and recommendations. The bill provides for the termination of the task force on July 1, 2021.

The bill also requires the DOS, upon receiving consent of the property owners at the former Zion Cemetery site in Tampa, to partner with the University of South Florida, the Florida Agricultural and Mechanical University, and the Zion Cemetery Archaeological Committee formed under the auspices of the Tampa Housing Authority, to initiate an investigation to determine how many graves remain at the site. The DOS is to contract with the University of South Florida and the Florida Agricultural and Mechanical University for the identification and location of eligible next of kin. The universities are required to provide the DOS, no later than January 1, 2021, with

a list of possible descendants of those buried at the site and, to the extent possible, their contact information.

The Division of Historical Resources of the DOS must ensure that any abandoned African-American Cemetery identified by the task force is listed in the Florida Master Site File and seek placement of an Official Florida Historical Marker at a site with the approval of the land owner.

The bill appropriates \$100,000 from the General Revenue Fund to the DOS to implement this act. From these funds, \$50,000 must be used for the creation, placement, and maintenance of a memorial at the site of the former Zion Cemetery in Tampa, and \$50,000 is allocated for the creation, placement, and maintenance of a memorial at the site of the former Ridgewood Cemetery at C. Leon King High School in Tampa.

The bill takes effect July 1, 2020.

II. Present Situation:

Task Force Requirements under Section 20.03, Florida Statutes

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.” This provision specifies that the existence of the task force terminates upon the completion of its assignment. Further, members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation and are authorized to receive only per diem and reimbursement for travel expenses.¹

Florida Law Related to Historic and Abandoned Cemeteries, and to Unmarked Human Remains

Cemetery Regulation

Chapter 470, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the Act), generally regulates funeral and cemetery services.² The Act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.³

Section 497.005(13), F.S., defines the term “cemetery” to mean:

“a place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the

¹ Section 20.052(2)(d), F.S.

² See Section 497.001, F.S.

³ Sections 497.101, F.S., and 497.103, F.S.

interment or disposition of cremated remains; or any combination of one or more of such structures or places.”

The Act allows for the moving of graves – disinterment and reinterment.⁴ Disinterment and reinterment must be made in the physical presence of a licensed funeral director, unless reinterment occurs in the same cemetery.⁵ Further, the funeral director is to obtain written authorization from a legally authorized person or court of competent jurisdiction prior to any disinterment and reinterment. Section 497.05(43), F.S., defines the term “legally authorized person” by providing a priority listing which begins with the decedent (when written inter vivos authorizations and directions are provided by the decedent) and includes relatives of the decedent.⁶ Additionally, the definition provides for other persons who may qualify– such as a public health officer, medical examiner or county commission – should a family member not exist or be available.⁷ Thus, if a legally authorized person is not available, a court of competent jurisdiction may provide the written authorization prior to the disinterment and reinterment of a dead human body.⁸

There is a large number of abandoned cemeteries in Florida.⁹ Section 497.284, F.S., governs abandoned cemeteries, and authorizes counties and municipalities, upon notice to the Department of Financial Services, to maintain and secure an abandoned cemetery or one that has not been maintained for more than six months. The solicitation of private funds and the expenditure of public funds are authorized for such maintenance and security.¹⁰ These efforts of maintenance and security are statutorily exempt from civil liabilities or penalties for damages to property at the cemetery.¹¹ Additionally, the county or municipality is permitted to maintain an action against the cemetery owner to recover costs for maintenance or security.¹²

Criminal Offenses Concerning Dead Bodies and Graves under Chapter 872, F.S.

In Florida, criminal offenses concerning dead bodies and graves are governed by Chapter 872, F.S.¹³ Section 872.02(1), F.S., provides that it is a third degree felony¹⁴ to willfully and knowingly destroy, mutilate, deface, injure or remove any tomb¹⁵ containing human skeletal remains and disturb memorials including fences associated with a monument containing human skeletal remains¹⁶ It is a second degree felony¹⁷ to willfully and knowingly disturb the contents of

⁴ See Section 497.384, F.S.

⁵ Section 487.384(1), F.S.

⁶ Section 497.05(43), F.S.

⁷ *Id.*

⁸ Section 497.384(3), F.S.

⁹ See *What are the applicable laws and regulations?* <https://dos.myflorida.com/historical/archaeology/human-remains/abandoned-cemeteries/what-are-the-applicable-laws-and-regulations/> (last visited November 15, 2019).

¹⁰ *Id.*

¹¹ Section 497.284(2), F.S.

¹² Section 497.284(3), F.S.

¹³ Chapter 872, F.S., is entitled, “Offenses Concerning Dead Bodies and Graves.”

¹⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁵ This section provides that the term “tomb” includes any mausoleum, columbarium, or below ground crypt.

¹⁶ Section 872.02(1), F.S.

¹⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

a grave or tomb.¹⁸ Section 872.02, F.S., specifies that the offenses described above do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the DOS;¹⁹
- Cemeteries operating under chapter 497, F.S.;
- Any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents as set forth in subsection (1).

The section provides that a “tomb” includes any mausoleum,²⁰ columbarium,²¹ or below ground crypt.”²²

The 1998 Task Force on Abandoned and Neglected Cemeteries

In 1998, prompted by the many neglected and abandoned cemeteries throughout Florida, the Legislature enacted the Cemetery Preservation and Consumer Protection Act (CPCPA).²³ The CPCPA mandated and funded the creation of an 11-member Task Force on Abandoned and Neglected Cemeteries (the “1998 Task Force”) within the Department of Banking and Finance.²⁴ The CPCPA directed the 1998 Task Force to review and report on the status of neglected and abandoned cemeteries and, if necessary, propose legislation to counter this problem.²⁵

The 1998 Task Force submitted its Final Report on January 15, 1999.²⁶ The Task Force determined that the abandonment and neglect of cemeteries was “sufficiently wide spread to warrant government intervention.”²⁷ Specifically, the Task Force found that:

- The data collected on some 3,580 cemeteries suggested 40 percent to 50 percent of the cemeteries in Florida are abandoned or neglected.
- Lack of funding appears to be a significant factor contributing to the neglect by private, unlicensed cemeteries.
- City and County representatives on the 1998 Task Force verified that neglected cemeteries create problems for citizens and local governments and burden governmental resources.
- Older neglected cemeteries may represent a loss of historic or archeological values.

¹⁸ Section 872.02(2), F.S.

¹⁹ The powers and duties of the Division of Historical Resources of the Department of State are set forth in s. 267.031, F.S. Subject to some limitations, a State Archaeologist, as employed by the Division, may assume jurisdiction over an unmarked human burial site in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. See ss. 872.05(4), (5), and (6), F.S.

²⁰ Section 497.005(46), F.S., defines a “mausoleum” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains.”

²¹ Section 497.005(18), F.S., defines a “columbarium” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.”

²² Section 872.02(4), F.S.

²³ See Chapter 98-268, L.O.F.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Final Report of Task Force on Abandoned and Neglected Cemeteries*, available at <https://www.coj.net/city-council/docs/brcemeteries-1999-statetaskforce-finalreport.aspx> (last visited November 4, 2019).

²⁷ *Id.* at p. 3.

- Legislation is needed to establish guidelines, definitions, methods of establishing care for neglected and abandoned cemeteries, agencies responsible for providing such care, the funding mechanism for such projects, as well as a permanent structure to continue the location, identification, protection, preservation and care of such cemeteries.
- A grants-in-aid type program using matching funds would help ameliorate the problems created by abandoned and neglected cemeteries.
- Funding to address the problems and recommends in the proposed legislation may be derived from: (1) a one-time appropriation by the legislature, (2) a fee on death certificates, (3) enabling legislation to permit Cities and Counties to include in their budgets funds for this purpose; and (4) the establishment of a non-profit corporation within the Department of Banking and Finance to obtain donations.
- It is imperative to stop the proliferation of neglected and abandoned cemeteries.
- The legislature has already established in Chapter 872 protection for all human burial sites and all human remains regardless of whether or not the site is abandoned.²⁸

The 1998 Task Force recommended that it be allowed to continue by either (i) “continu[ing] in its present form for a finite time” to more thoroughly examine the extent of the problems; or, (ii) the “non-profit corporation” suggested as part of proposed legislation “should continue these functions on a permanent basis.”²⁹ The 1998 Task Force also recommended to:

- Establish that local governments - combined with a statewide approach via the designated agency and non-profit - are the best way to manage issues created by abandoned and neglected cemeteries.
- Establish that owners of unlicensed cemeteries have a duty to care for their cemeteries in such a manner as to avoid neglect.
- Proscribe abandonment and neglect of cemeteries.
- Establish that a copy of all burial transit permits be filed with the Clerk of Court in the county of burial.
- Establish an easement or right of entry to enter and inspect private cemeteries for officially designated persons other than the next of kin.
- Establish that unlicensed cemeteries be required to post a sign providing notice of the existence of a cemetery at the posted location.
- Proscribe the creation of new cemeteries except under the provisions of Part I of Chapter 497, thereby insuring that a care and maintenance fund is established for each new cemetery.³⁰

The specific findings and recommendations of the 1998 Task Force have not been addressed by subsequent legislation.

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 8.

³⁰ *Id.* at 8-9.

Zion Cemetery

Zion Cemetery, established in 1901, is believed to be Tampa's first cemetery for African-Americans with room for some 800 graves.³¹ Zion Cemetery disappeared from public view and city maps by 1929.³² In 1951, the Tampa Housing Authority started construction on the Robles Park Apartments on land that includes part of the Zion Cemetery site, and construction crews found several unmarked graves and three caskets.³³

The Robles Park Village housing (still owned by the Tampa Housing Authority) and two other commercial businesses owned by two private sector individuals now stand on the land that once was the site of the African-American cemetery. Upon learning that the Zion Cemetery might still lie beneath at least a portion of its Robles Park Village Apartments, the Tampa Housing Authority organized a consultation committee and hired archaeologists to survey its property.³⁴ In late August, archeologists used a ground-penetrating radar and discovered what they believe to be 126 caskets beneath the Tampa Housing Authority land.³⁵ The Tampa Housing Authority has begun the process of moving 29 families who occupy five buildings within the housing complex atop where Zion Cemetery is believed to sit underground.³⁶

Other Rediscovered Abandoned Cemeteries in the Tampa Area

Ridgewood Cemetery

Just last month, the Hillsborough County School District (HCS D) learned the old Ridgewood Cemetery may have been located at the southeast corner of the King High School campus, which is now occupied by a small building and open land used for the agricultural program.³⁷ Ridgewood was designated as a pauper's cemetery and at least 280 people – mostly African Americans – were interred between 1942 and 1954.³⁸

On October 28, the HCS D created an advisory committee, the Historical Response Committee, to determine how to handle the search for unmarked graves at King High School and what to do if they were found. The HCS D hired a geotechnical firm, Geoview, to conduct a survey on the

³¹ Paul Guzzo, *A community, not just Zion Cemetery, disappeared to build homes for whites*, TAMPA BAY TIMES, Nov. 4, 2019, <https://www.tampabay.com/news/hillsborough/2019/11/04/a-community-not-just-zion-cemetery-disappeared-to-build-homes-for-whites/#talk-wrapper>.

³² *Id.*

³³ Paul Guzzo, *Key dates in the history of Tampa's forgotten Zion Cemetery*, TAMPA BAY TIMES, Jun. 19, 2019 (Updated Aug. 28, 2019) <https://www.tampabay.com/florida/2019/06/23/key-dates-in-the-history-of-tampas-forgotten-zion-cemetery>.

³⁴ Paul Guzzo, *Richard Gonzmart believes no coffins will be found on his Zion Cemetery land*, TAMPA BAY TIMES, Sep. 24, 2019, <http://ttt-hiweb.newscyclecloud.com/news/hillsborough/2019/09/24/richard-gonzmart-believes-no-coffins-will-be-found-on-his-zion-cemetery-land>.

³⁵ *Id.*

³⁶ Divya Kumar, *Tenant leaders seek quicker relocation for people living near Zion Cemetery*, TAMPA BAY TIMES, Oct. 10, 2019, <https://www.tampabay.com/news/tampa/2019/10/10/tenant-leaders-seek-quicker-relocation-for-people-living-near-zion-cemetery>.

³⁷ Paul Guzzo, *Records show King High gym may have been built atop paupers cemetery*, TAMPA BAY TIMES, Oct. 22, 2019 (updated Oct. 23, 2019), <https://www.tampabay.com/news/education/2019/10/22/map-shows-king-high-gym-may-have-been-built-atop-paupers-cemetery>.

³⁸ Lori Rozsa, *Lost lives, fresh heartache as a black cemetery is found buried under a high school*, WASHINGTON POST, November 24, 2019, https://www.washingtonpost.com/national/lost-lives-fresh-heartache-as-a-black-cemetery-is-found-buried-under-a-high-school/2019/11/24/5e755e4a-0ed4-11ea-bf62-eadd5d11f559_story.html.

south end of King High School campus using a ground penetrating radar to look for any signs of the lost Richwood Cemetery on the campus.³⁹ On November 20, 2019, the HCSD released the of the ground penetrating radar survey (November Press Release).⁴⁰ The survey of the southern edge of the King High School campus showed evidence of burials, approximately 145 suspected graves.⁴¹ The scan performed on the northeast corner of the campus showed no evidence of burials or graves.⁴²

Historical records generally indicate that there were between 250 and 268 burials at Ridgewood Cemetery.⁴³ Possible reasons why the radar survey only revealed a total of approximately 145 possible graves include:

- The radar may have more difficulty locating smaller coffins of infants and children.
- Some coffins may have decayed underground preventing detection by scan some 75 years later.
- Some graves may be under the agricultural workshop building.
- Some graves may have been moved to another cemetery.
- Limitations of radar technology.⁴⁴

The November Press Release indicates that HCSD will deliver Geoview’s findings to the “county medical examiner and the state archeologist” with the expectation that they will take the thirty days to review the findings.⁴⁵ HCSD indicates that if possession of the land is “turned back over to the school district,” it will work with members of the Historical Response Committee to “discuss proper ways to memorialize the individuals, how best to care for the space, and learning opportunities for students at King High School and other schools.”⁴⁶

Fort Brooke Estuary Cemetery

Archeologists, in September 2018, uncovered three grave shafts with human remains during the development of the 50-plus acre Water Street Tampa project.⁴⁷ The grave shafts were believed to be of an old military burial ground from the Seminole War era, known as Estuary Cemetery.⁴⁸ The archeologists’ July 2019 report announced that the three grave shafts had human remains, but it did not identify the ancestry and indicated that work could resume on the development site. However, not much more is known about the findings or what may have been discovered due to it being a private site.

³⁹ Jordan, Dave, *Forgotten Cemetery Under King High School? District Awaits Answers*, SPECTRUM NEWS 9, Oct. 28, 2019, <https://www.baynews9.com/fl/tampa/news/2019/10/28/forgotten-cemetery-under-king-high-school--district-awaits-answers>.

⁴⁰ Hillsborough County School District, Press Release, *School District Releases Findings from Scans on King High School Property*, <https://www.sdhc.k12.fl.us/newsdesk/article/1578/school-district-releases-findings-from-scans-on-king-high-school-property> (last visited November 21, 2019).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *supra* note 49.

⁴⁷ Paul Guzzo, *More lost cemeteries will be found, historians say*, TAMPA BAY TIMES, Oct. 28, 2019, <https://www.tampabay.com/news/tampa/2019/10/28/more-lost-cemeteries-will-be-found-historians-say>.

⁴⁸ *Id.*

III. Effect of Proposed Changes:

Section 1 creates the Task Force on Abandoned African-American Cemeteries to study the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and developing and recommending strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased.

The task force is to be chaired by the Secretary of State, or his or her designee, and is composed of:

- A representative of the Bureau of Archaeological Research of the Division of Historical Resources, appointed by the Secretary of State;
- One person nominated by the President of the Florida State Conference of the National Association for the Advancement of Colored People and appointed by the Secretary of State;
- One representative of the Florida Council of Churches, nominated by the executive director of the council and appointed by the Secretary of State;
- One representative of the Florida African American Heritage Preservation Network, nominated by the executive director of the network and appointed by the Secretary of State;
- One representative of the Florida Public Archaeology Network, appointed by the Secretary of State; and
- One representative of the cemetery industry, appointed by the Secretary of State.

The task force is required to hold its first meeting by August 1, 2020, and shall meet as many times as it deems necessary to complete its duties. The task force is required to:

- Review the findings and recommendations made by the 1998 Task Force and any legislative or administrative action that was taken in response to the task force's findings and recommendations;
- Examine the adequacy of current practices regarding the preservation of unmarked and abandoned African-American cemeteries and burial grounds and identify any challenges unique to African-American cemeteries and burial grounds;
- Identify locations of unmarked and abandoned African-American cemeteries and burial grounds throughout the state and propose strategies, including any proposed legislation, for the preservation and evaluation of such sites; and
- Make recommendations regarding the creation, placement, and maintenance of memorials at the sites of the former Zion Cemetery and the former Ridgewood Cemetery in Tampa,

The task force is required to submit a report by March 1, 2021, detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

This section expires on July 1, 2021.

Section 2 requires the DOS, upon receiving consent of the property owners at the former Zion Cemetery site in Tampa, to partner with the University of South Florida (USF), the Florida Agricultural and Mechanical University (FAMU), and the Zion Cemetery Archaeological

Committee formed under the auspices of the Tampa Housing Authority to continue an investigation to determine how many graves remain at the site. Any historical resource, record, archive, artifact, public research, or medical record recovered through the course of the investigation by USF or FAMU shall remain in the custody of either university for archiving and preservation until the DOS requests custody of such resource, record, archive, artifact, public research, or medical record.

This section requires the DOS is to contract with USF and FAMU for the identification and location of eligible next of kin of those buried at the site.

By January 1, 2021, the universities must provide the DOS with a list of possible descendants of those buried at the site and, to the extent possible, their contact information. For any identification of next of kin occurring on or after January 1, 2021, the universities must provide contact information of the next of kin to the DOS.

Section 3 provides that the Division of Historical Resources (Division) of the DOS must ensure that any abandoned African-American cemetery identified by the task force is listed on the Florida Master Site File. Upon such a cemetery's listing in the Florida Master Site, the Division is required to – in lieu of the normal application process – seek placement of an Official Florida Historical Marker at a site with approval of the property owner. The bill permits a person or organization affiliated with an abandoned cemetery to assist the Division in researching the history of such a site in the preparation of a historical marker's creation and placement. The costs for the creation and placement of a historical marker are to be borne by the Division.

Section 4 provides that the sum of \$100,000 in nonrecurring funds shall be appropriated from the General Revenue Fund to the DOS, for the 2020-2021 fiscal year, for the purpose of implementing this act with:

- \$50,000 being allocated for the creation, placement, and maintenance of a memorial at the site of the former Zion Cemetery in Tampa, and
- \$50,000 being allocated for the creation, placement, and maintenance of a memorial at the site of the former Ridgewood Cemetery at C. Leon King High School in Tampa.

Section 5 provides that the act will take effect July 1, 2020.

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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Task Force

Because the bill is silent as to compensation and travel expense, s. 20.052(4)(d), F.S., governs and the task force members will not be entitled to additional compensation but are authorized to receive per diem and reimbursement for travel expenses as provided in s. 112.061, F.S. These costs will be borne by the DOS as the appointing authority of the task force members.

The DOS will incur an indeterminate amount of administrative expenses as the agency providing administrative and technical support for the task force.

Cemeteries – Memorials and Placement of Florida Historical Markers

The bill appropriates \$100,000 to DOS with \$50,000 being allocated for a memorial at the site of the former Zion Cemetery and \$50,000 allocated for a memorial at the site of former Ridgewood Cemetery.

The DOS will incur costs each time it is required to place an Official Florida Historical Marker at a site of a cemetery identified by the task force. Currently, the cost of a Florida Historical Marker is determined by the amount of text. For a single-sided marker with the same text on both sides of the marker, the cost is \$2,010. For a double-sided marker with different text appearing on both sides of the marker, the cost is \$2,330.⁴⁹

⁴⁹ See Historical Markers FAQ, <https://dos.myflorida.com/historical/about/division-faqs/marker/> (last visited December 9, 2019).

USF, FAMU and the Zion Cemetery Archaeological Committee may incur an indeterminate amount of administrative expenses in partnering with the DOS to determine how many graves remain at the site of the former Zion Cemetery and the identification and location of decedents.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on the statements made in the November Press Release regarding notification to the medical examiner and state archeologist, and the possible return of jurisdiction of the property to HCSD, it appears HCSD is treating the burials found on the King High School campus as “unmarked human burials” pursuant to s. 872.05, F.S. The term “unmarked human burial” is defined to mean:

“any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.”⁵⁰

When an unmarked human burial is discovered – other than during an authorized archaeological excavation⁵¹ – all disturbing activity of the burial must cease, and the district medical examiner must be notified.⁵² Activity may not resume until authorized by the district medical examiner or the State Archaeologist.⁵³ If the district medical examiner determines the unmarked human burial “may be involved in a legal investigation or represents the burial of an individual who has been dead less than 75 years,” he or she must “assume jurisdiction over and responsibility for the location of the burials.”⁵⁴ The examiner is given 30 days after notification of the burial to determine whether he or she will maintain jurisdiction or refer the matter to the State Archaeologist.⁵⁵

If the district medical examiner finds the human burial is “not involved in a legal investigation and represents the burial of an individual who has been dead 75 years or more,” he or she must notify the State Archaeologist, and the Division of the Department of State may assume jurisdiction over and responsibility for the burial.⁵⁶

⁵⁰ Section 872.05(2)(f), F.S.

⁵¹ Section 872.05(5), F.S., provides for a similar process if an unmarked human burial is discovered during an authorized archeological excavation.

⁵² Section 872.05(4), F.S.

⁵³ *Id.*

⁵⁴ Section 872.05(4)(a), F.S.

⁵⁵ *Id.*

⁵⁶ Section 872.05(4)(c), F.S.

The Division is authorized to assume jurisdiction over and responsibility for an unmarked human burial in order to initiate efforts for the proper protection of the burial and the human remains and associated burial artifacts.⁵⁷ Upon assuming jurisdiction, the State Archaeologist must determine whether the burial is historically, archaeologically, or scientifically significant.⁵⁸ If it is deemed to be significant, reinterment may not occur until the remains have been examined by a human skeletal analyst designated by the State Archaeologist.⁵⁹ Additionally, the State Archaeologist must make reasonable efforts to identify and locate person who can establish kinship, tribal, community, or ethnic relationships with the remains which constitute the burial.⁶⁰ If unable to establish such relationships, he or she he or she shall consult with persons with relevant experience.⁶¹

The November Press Release instructs that HCSD provided notice to the medical examiner on that same day - November 21, 2019. Thus, the medical must make a determination regarding jurisdiction and referral to the State Archeologist on or before Monday, December 23, 2019.⁶²

VIII. Statutes Affected:

This bill does not amend 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 December 9, 2019:

The committee substitute:

- Provides that the task force make a recommendation on the creation, placement, and maintenance of a memorial at the site of the former Ridgewood Cemetery in Tampa.
- Eliminates any reference to exhumation of remains.
- Requires the DOS to partner with FAMU and Zion Cemetery Archaeological Committee as well as USF to determine the number how many graves remain at the site.
- Requires any historical resource recovered by USF or FAMU must remain in the custody of either university until DOS takes custody.
- Requires DOS to contract with USF and FAMU for the identification and location of eligible next of kin.
- Requires the DOS to list in the Florida Master Site File any abandoned African-American Cemeteries identified by the task force. Upon such listing, the DOS must seek placement of an Official Florida Historical Marker at a site with the costs of the historical marker's creation and placement being borne by DOS.

⁵⁷ Section 872.05(6), F.S.

⁵⁸ Section 872.05(6)(a), F.S.

⁵⁹ *Id.*

⁶⁰ Section 872.05(6)(b), F.S.

⁶¹ Section 872.05(6)(c), F.S.

⁶² Section 872.05(4)(a), F.S.

- Appropriates \$100,000, with \$50,000 allocated for a memorial at the site of the former Zion Cemetery and \$50,000 allocated for a memorial at the site of the former Ridgewood Cemetery.

B. Amendments:

None.

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



156020

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/09/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. (1) The Task Force on Abandoned African-American
Cemeteries, a task force as defined in s. 20.03(8), Florida
Statutes, is created adjunct to the Department of State for the
express purpose of studying the extent to which unmarked or
abandoned African-American cemeteries and burial grounds exist
throughout the state and developing and recommending strategies



156020

11 for identifying and recording cemeteries and burial grounds
12 while also preserving local history and ensuring dignity and
13 respect for the deceased. Except as otherwise provided in this
14 section, the task force shall operate in a manner consistent
15 with s. 20.052, Florida Statutes. The department shall provide
16 administrative and staff support relating to the functions of
17 the task force.

18 (2) The task force is composed of the following members:

19 (a) The Secretary of State, or his or her designee, who
20 shall serve as chair.

21 (b) A representative of the Bureau of Archaeological
22 Research of the Division of Historical Resources, appointed by
23 the Secretary of State.

24 (c) One person nominated by the President of the Florida
25 State Conference of the National Association for the Advancement
26 of Colored People and appointed by the Secretary of State.

27 (d) One representative of the Florida Council of Churches,
28 nominated by the executive director of the council and appointed
29 by the Secretary of State.

30 (e) One representative of the Florida African American
31 Heritage Preservation Network, nominated by the executive
32 director of the network and appointed by the Secretary of State.

33 (f) One representative of the Florida Public Archaeology
34 Network, appointed by the Secretary of State.

35 (g) One representative of the cemetery industry, appointed
36 by the Secretary of State.

37 (3) The task force shall hold its first meeting by August
38 1, 2020. The task force may meet as many times as it deems
39 necessary to complete the duties prescribed in this section.



156020

40 (4) The task force shall:
41 (a) Review the findings and recommendations made by the
42 Task Force on Abandoned and Neglected Cemeteries created
43 pursuant to chapter 98-268, Laws of Florida, and any legislative
44 or administrative action that was taken in response to the task
45 force's findings and recommendations.
46 (b) Examine the adequacy of current practices regarding the
47 preservation of unmarked and abandoned African-American
48 cemeteries and burial grounds and identify any challenges unique
49 to African-American cemeteries and burial grounds.
50 (c) Identify locations of unmarked and abandoned African-
51 American cemeteries and burial grounds throughout the state and
52 propose strategies, including any proposed legislation, for the
53 preservation and evaluation of such sites.
54 (d) Make recommendations regarding the creation, placement,
55 and maintenance of a memorial at the sites of the former Zion
56 Cemetery and the former Ridgewood Cemetery in Tampa.
57 (5) By March 1, 2021, the task force shall submit a report
58 detailing its findings and recommendations to the Governor, the
59 President of the Senate, the Speaker of the House of
60 Representatives, the Minority Leader of the Senate, and the
61 Minority Leader of the House of Representatives.
62 (6) This section expires July 1, 2021.
63 Section 2. (1) (a) Upon receiving consent of the property
64 owners at the former Zion Cemetery site in Tampa, the Department
65 of State shall partner with the University of South Florida, the
66 Florida Agricultural and Mechanical University, and the Zion
67 Cemetery Archaeological Committee formed under the auspices of
68 the Tampa Housing Authority, to continue an investigation to



156020

69 determine how many graves remain at the site.

70 (b) Any historical resource, record, archive, artifact,
71 public research, or medical record that is recovered through the
72 course of the investigation by the University of South Florida
73 or the Florida Agricultural and Mechanical University shall
74 remain in the custody of either university for archiving and
75 preservation until the Department of State requests custody of
76 such resource, record, archive, artifact, public research, or
77 medical record.

78 (2) (a) The Department of State shall contract with the
79 University of South Florida and the Florida Agricultural and
80 Mechanical University for the identification and location of
81 eligible next of kin of those buried at the site.

82 (b) No later than January 1, 2021, the universities shall
83 provide the Department of State with a list of possible
84 descendants of those buried at the site and, to the extent
85 possible, their contact information.

86 (c) For any identification of next of kin occurring on or
87 after January 1, 2021, the universities must provide contact
88 information of the next of kin to the Department of State.

89 (3) The Department of State may adopt rules necessary to
90 administer this section.

91 Section 3. A county or municipality may request
92 reimbursement from the Department of State for any expenses
93 incurred on or after July 1, 2020, in connection with the
94 maintenance of historical or abandoned cemeteries. A county or
95 municipality may only submit a request for reimbursement once
96 per calendar year, and such expenses must have been incurred
97 within 1 year before submission of the request. A county or



156020

98 municipality may only be reimbursed by the department for half
99 of the expenses that are incurred out of public funds. A county
100 or municipality may not be reimbursed for any portion of
101 maintenance expenses which is funded through private funds
102 solicited by the county or municipality pursuant to s. 497.284,
103 Florida Statutes. The department may require a county or a
104 municipality seeking reimbursement to produce any documentation
105 specifying maintenance costs incurred.

106 Section 4. The Division of Historical Resources of the
107 Department of State shall ensure that any abandoned African-
108 American cemetery identified by the Task Force on Abandoned
109 African-American Cemeteries is listed in the Florida Master Site
110 File. Upon such a cemetery's listing in the Florida Master Site
111 File and in lieu of the normal application process for
112 historical markers, the division must seek placement of an
113 Official Florida Historical Marker at a site so long as the
114 approval of the owner of the property where the marker will be
115 placed has been obtained. A person or an organization affiliated
116 with an abandoned cemetery may assist the division in
117 researching the history of such a site in the preparation of a
118 historical marker's creation and placement. The costs for the
119 creation and placement of a historical marker authorized
120 pursuant to this section shall be borne by the division.

121 Section 5. For the 2020-2021 fiscal year, the sum of
122 \$500,000 in nonrecurring funds is appropriated from the General
123 Revenue Fund to the Department of State for the purpose of
124 implementing this act. Of such sum, \$50,000 shall be allocated
125 for the creation, placement, and maintenance of a memorial at
126 the site of the former Zion Cemetery in Tampa; \$50,000 shall be



156020

127 allocated for the creation, placement, and maintenance of a
128 memorial at the site of the former Ridgewood Cemetery at C. Leon
129 King High School in Tampa; and \$400,000 shall be allocated to
130 fund research associated with findings made by the Task Force on
131 Abandoned African-American Cemeteries. Any funds remaining
132 unexpended or unencumbered from this appropriation as of July 1,
133 2021, revert and shall be reappropriated for the same purpose,
134 or for the creation and placement of memorials or historical
135 markers at additional cemetery sites that are identified by the
136 Task Force on Abandoned African-American Cemeteries, in the
137 2021-2022 fiscal year.

138 Section 6. This act shall take effect July 1, 2020.

139
140 ===== T I T L E A M E N D M E N T =====

141 And the title is amended as follows:

142 Delete everything before the enacting clause
143 and insert:

144 A bill to be entitled

145 An act relating to abandoned cemeteries; creating the
146 Task Force on Abandoned African-American Cemeteries;
147 specifying the purpose of the task force; requiring
148 the Department of State to provide administrative and
149 staff support; specifying the composition of the task
150 force; providing meeting requirements; prescribing
151 duties of the task force; requiring the task force to
152 submit a report to the Governor and the Legislature by
153 a specified date; providing for expiration of the task
154 force; requiring the department to partner with
155 specified entities to undertake an investigation of



156020

156 the former Zion Cemetery site; specifying custody of
157 certain historical resources, records, archives,
158 artifacts, research, and medical records; requiring
159 the department to contract with the University of
160 South Florida and the Florida Agricultural and
161 Mechanical University for the identification and
162 location of eligible next of kin; requiring the
163 universities to provide certain information regarding
164 descendants to the department by a specified date;
165 authorizing the department to adopt rules; authorizing
166 counties and municipalities to seek reimbursement for
167 expenses related to the maintenance of abandoned
168 cemeteries; specifying requirements, limitations, and
169 conditions for such reimbursements; directing the
170 Division of Historical Resources of the department to
171 ensure the listing of certain cemeteries in the
172 Florida Master Site File; requiring the division to
173 seek placement of historical markers at certain
174 abandoned cemeteries, subject to certain limitations;
175 authorizing certain persons and organizations to
176 assist the division in researching the history of such
177 cemeteries; specifying that costs associated with the
178 creation and placement of such historical markers be
179 borne by the division; providing appropriations;
180 providing an effective date.

181
182 WHEREAS, until the conclusion of the Civil War, millions of
183 African Americans in the United States, including Florida, were
184 enslaved, and



156020

185 WHEREAS, following the end of slavery, African Americans
186 continued to be subject to various discriminatory practices,
187 including restrictions on burying the dead which resulted in
188 segregated cemeteries and burial grounds, and

189 WHEREAS, unlike predominantly white cemeteries and burial
190 grounds, African-American cemeteries and burial grounds were not
191 subject to regulations and recordkeeping necessary to protect
192 the dignity of the deceased, and

193 WHEREAS, as a result, many abandoned African-American
194 cemeteries and burial grounds have been inadvertently discovered
195 following years of disrepair and neglect when land is being
196 redeveloped or has been sold, and

197 WHEREAS, to this day, abandoned African-American cemeteries
198 throughout this state continue to be uncovered, as evidenced by
199 recent reports regarding the former Zion Cemetery site in the
200 Tampa Heights neighborhood and the former Ridgewood Cemetery on
201 the grounds of C. Leon King High School, both in the City of
202 Tampa, and

203 WHEREAS, the State of Florida recognizes its obligation to
204 identify and properly record abandoned African-American
205 cemeteries and burial grounds in order to preserve history,
206 better inform development decisions, and ensure dignity and
207 respect for the deceased, NOW, THEREFORE,



181220

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/09/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (156020) (with title**
2 **amendment)**

3
4 Delete lines 89 - 138
5 and insert:

6 Section 3. The Division of Historical Resources of the
7 Department of State shall ensure that any abandoned African-
8 American cemetery identified by the Task Force on Abandoned
9 African-American Cemeteries is listed in the Florida Master Site
10 File. Upon such a cemetery's listing in the Florida Master Site



181220

11 File and in lieu of the normal application process for
12 historical markers, the division must seek placement of an
13 Official Florida Historical Marker at a site so long as the
14 approval of the owner of the property where the marker will be
15 placed has been obtained. A person or an organization affiliated
16 with an abandoned cemetery may assist the division in
17 researching the history of such a site in the preparation of a
18 historical marker's creation and placement. The costs for the
19 creation and placement of a historical marker authorized
20 pursuant to this section shall be borne by the division.

21 Section 4. For the 2020-2021 fiscal year, the sum of
22 \$100,000 in nonrecurring funds is appropriated from the General
23 Revenue Fund to the Department of State for the purpose of
24 implementing this act. Of such sum, \$50,000 shall be allocated
25 for the creation, placement, and maintenance of a memorial at
26 the site of the former Zion Cemetery in Tampa, and \$50,000 shall
27 be allocated for the creation, placement, and maintenance of a
28 memorial at the site of the former Ridgewood Cemetery at C. Leon
29 King High School in Tampa.

30 Section 5. This act shall take effect July 1, 2020.

31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete lines 165 - 180

35 and insert:

36 directing the Division of Historical Resources of the
37 department to ensure the listing of certain cemeteries
38 in the Florida Master Site File; requiring the
39 division to seek placement of historical markers at



181220

40 certain abandoned cemeteries, subject to certain
41 limitations; authorizing certain persons and
42 organizations to assist the division in researching
43 the history of such cemeteries; specifying that costs
44 associated with the creation and placement of such
45 historical markers be borne by the division; providing
46 appropriations; providing an effective date.

By Senator Cruz

18-00114-20

2020220__

1 A bill to be entitled
 2 An act relating to abandoned cemeteries; creating the
 3 Task Force on Abandoned African-American Cemeteries;
 4 specifying the purpose of the task force; requiring
 5 the Department of State to provide administrative and
 6 staff support; specifying the composition of the task
 7 force; providing meeting requirements; prescribing
 8 duties of the task force; requiring the task force to
 9 submit a report to the Governor and Legislature by a
 10 specified date; providing for expiration of the task
 11 force; requiring the department to partner with the
 12 University of South Florida to undertake an
 13 investigation of the former Zion Cemetery site;
 14 requiring certain historical resources, records, and
 15 archives, artifacts, research, medical records, and
 16 human remains to remain in the custody of the
 17 University of South Florida; providing exceptions;
 18 requiring the department to contract with the
 19 university for the identification and location of
 20 eligible next of kin of certain persons; requiring the
 21 department to notify the next of kin of certain
 22 payment or reimbursement provisions; requiring the
 23 department to reimburse the next of kin of persons
 24 whose bodies are buried and exhumed at the former Zion
 25 Cemetery or to pay directly to a provider for the
 26 costs associated with funeral services, reinterment,
 27 and grave marker expenses; providing a process for
 28 reimbursement or payment by the department; providing
 29 that a charitable donation made toward funeral,

Page 1 of 7

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

18-00114-20

2020220__

30 reinterment, and grave marker expenses is not eligible
 31 for reimbursement; requiring the department to submit
 32 a report to the Governor, Cabinet, and Legislature by
 33 a specified date; authorizing the department to adopt
 34 rules; providing appropriations; providing an
 35 effective date.

36
 37 WHEREAS, until the conclusion of the Civil War, millions of
 38 African Americans in the United States, including Florida, were
 39 enslaved, and

40 WHEREAS, following the end of slavery, African Americans
 41 continued to be subject to various discriminatory practices,
 42 including restrictions on burying the dead which resulted in
 43 segregated cemeteries and burial grounds, and

44 WHEREAS, unlike predominantly white cemeteries and burial
 45 grounds, African-American cemeteries and burial grounds were not
 46 subject to regulations and recordkeeping necessary to protect
 47 the dignity of the deceased, and

48 WHEREAS, as a result, many abandoned African-American
 49 cemeteries and burial grounds have been inadvertently discovered
 50 following years of disrepair and neglect when land is being
 51 redeveloped or has been sold, and

52 WHEREAS, to this day, abandoned African-American cemeteries
 53 throughout this state continue to be uncovered, as evidenced by
 54 a June 2019 report in the *Tampa Bay Times* regarding the former
 55 Zion Cemetery site in the Tampa Heights neighborhood of the City
 56 of Tampa, and

57 WHEREAS, the State of Florida recognizes its obligation to
 58 identify and properly record abandoned African-American

Page 2 of 7

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

18-00114-20 2020220__

cemeteries and burial grounds in order to preserve history,
better inform development decisions, and ensure dignity and
respect for the deceased, NOW, THEREFORE,

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

Section 1. (1) The Task Force on Abandoned African-American Cemeteries, a task force as defined in s. 20.03(8), Florida Statutes, is created adjunct to the Department of State for the express purpose of studying the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and developing and recommending strategies for identifying and recording cemeteries and burial grounds while also preserving local history and ensuring dignity and respect for the deceased. Except as otherwise provided in this section, the task force shall operate in a manner consistent with s. 20.052, Florida Statutes. The department shall provide administrative and staff support relating to the functions of the task force.

(2) The task force is composed of the following members:

(a) The Secretary of State, or his or her designee, who shall serve as chair.

(b) A representative of the Bureau of Archaeological Research of the Division of Historical Resources, appointed by the Secretary of State.

(c) One person nominated by the President of the Florida State Conference of the National Association for the Advancement of Colored People and appointed by the Secretary of State.

(d) One representative of the Florida Council of Churches,

18-00114-20 2020220__

nominated by the executive director of the council and appointed by the Secretary of State.

(e) One representative of the Florida African American Heritage Preservation Network, nominated by the executive director of the network and appointed by the Secretary of State.

(f) One representative of the Florida Public Archaeology Network, appointed by the Secretary of State.

(g) One representative of the cemetery industry, appointed by the Secretary of State.

(3) The task force shall hold its first meeting by August 1, 2020. The task force may meet as many times as it deems necessary to complete the duties prescribed in this section.

(4) The task force shall:

(a) Review the findings and recommendations made by the Task Force on Abandoned and Neglected Cemeteries created pursuant to chapter 98-268, Laws of Florida, and any legislative or administrative action that was taken in response to the task force's findings and recommendations.

(b) Examine the adequacy of current practices regarding the preservation of unmarked and abandoned African-American cemeteries and burial grounds and identify any challenges unique to African-American cemeteries and burial grounds.

(c) Identify locations of unmarked and abandoned African-American cemeteries and burial grounds throughout the state and propose strategies, including any proposed legislation, for the preservation and evaluation of such sites.

(d) Make recommendations regarding the creation, placement, and maintenance of a memorial at the site of the former Zion Cemetery in Tampa and the location of a site for the reinterment

18-00114-20 2020220__

117 of any unidentified or unclaimed remains that are retrieved from
 118 the former Zion Cemetery site.

119 (5) By March 1, 2021, the task force shall submit a report
 120 detailing its findings and recommendations to the Governor, the
 121 President of the Senate, the Speaker of the House of
 122 Representatives, the Minority Leader of the Senate, and the
 123 Minority Leader of the House of Representatives.

124 (6) This section expires July 1, 2021.

125 Section 2. (1)(a) Upon receiving consent of the property
 126 owners at the former Zion Cemetery site in Tampa, the Department
 127 of State shall partner with the University of South Florida to
 128 initiate an investigation to determine how many graves remain at
 129 the site.

130 (b) Any historical resource, record, archive, artifact,
 131 public research, or medical record that is recovered through the
 132 course of the investigation by the University of South Florida
 133 shall remain in the custody of the university for archiving and
 134 preservation until the Department of State requests custody of
 135 such resource, record, archive, artifact, public research, or
 136 medical record.

137 (c) Any human remains exhumed from the former Zion Cemetery
 138 site shall remain in the custody of the university for
 139 identification purposes until the remains are returned to the
 140 next of kin or reburied pursuant to this act.

141 (2)(a) The Department of State shall contract with the
 142 University of South Florida for the identification and location
 143 of eligible next of kin of any recovered human remains and the
 144 update of information on associated artifacts and materials.

145 (b) No later than January 1, 2021, the University of South

18-00114-20 2020220__

146 Florida shall provide the Department of State with contact
 147 information for the next of kin for each set of human remains
 148 which has been returned to a next of kin.

149 (c) For any identification of next of kin occurring on or
 150 after January 1, 2021, the University of South Florida must
 151 provide location information of the next of kin to the
 152 Department of State at least 5 days before returning the human
 153 remains to the next of kin.

154 (d) Beginning January 1, 2021, the Department of State must
 155 notify the next of kin responsible for a set of human remains
 156 about the payment or reimbursement provisions specified in
 157 subsection (3). Such notification must be made within 15
 158 business days after the department's receipt of the location
 159 information of the next of kin.

160 (3) The Department of State shall reimburse the next of kin
 161 or pay directly to the provider up to \$7,500 for funeral,
 162 reinterment, and grave marker expenses for each person whose
 163 body was buried at and exhumed, or otherwise recovered, from the
 164 former Zion Cemetery site.

165 (a) In order to receive reimbursement, the next of kin must
 166 submit to the Department of State receipts for, or documentation
 167 of, expenses. Reimbursement must be made pursuant to s. 215.422,
 168 Florida Statutes.

169 (b) If expenses are to be paid directly to the provider,
 170 the funeral home or other similar entity must submit an invoice
 171 to the Department of State for the cost of the person's funeral,
 172 reinterment, and grave marker expenses. Payment must be made
 173 pursuant to s. 215.422, Florida Statutes.

174 (c) A charitable donation made toward funeral, reinterment,

18-00114-20

2020220__

175 and grave marker expenses is not eligible for reimbursement.

176 (4) By February 1, 2022, the Department of State shall
177 submit a report to the Governor and Cabinet, the President of
178 the Senate, and the Speaker of the House of Representatives
179 regarding any payments and reimbursements made pursuant to this
180 section.

181 (5) The Department of State may adopt rules necessary to
182 administer this section.

183 Section 3. For the 2020-2021 fiscal year, the sum of
184 \$500,000 in nonrecurring funds is appropriated from the General
185 Revenue Fund to the Department of State for the purpose of
186 implementing this act. Of such sum, \$50,000 shall be allocated
187 for the creation, placement, and maintenance of a memorial at
188 the site of the former Zion Cemetery in Tampa, and \$450,000
189 shall be allocated to the Bureau of Archaeological Research of
190 the Division of Historical Resources for costs associated with
191 the disinterment and reinterment of any remains retrieved at the
192 former Zion Cemetery site. Any funds remaining unexpended or
193 unencumbered from this appropriation as of July 1, 2021, revert
194 and shall be reappropriated for the same purpose in the 2021-
195 2022 fiscal year.

196 Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/9/19

Meeting Date

SB 220

Bill Number (if applicable)

Topic Abandoned Cemeteries

Amendment Barcode (if applicable)

Name Lauren Storch

Job Title Government Relations

Address 601 E. Kennedy Blvd.

Phone 813-274-6831

Street

Tampa

FL

33601

City

State

Zip

Email StorchLa@HCF LGov.net

Speaking: [] For [] Against [] Information

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

Representing Hillsborough County

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

Lobbyist registered with Legislature: [x] 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)

12-09-11 Meeting Date

SB 220 Bill Number (if applicable)

Topic Abandoned Cemeteries

Amendment Barcode (if applicable)

Name Karen Kirkman

Job Title Retired

Address 5518 SW 88th Ct Street

Phone 352-262-5602

Gainesville FL 32608 City State Zip

Email haidocent@yahoo.com

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

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

Representing Alachua County Historical Commission

Appearing at request of Chair: [] Yes [X] 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)

12/09/19

Meeting Date

SB 220

Bill Number (if applicable)

Topic ABANDONED CEMETERIES

Amendment Barcode (if applicable)

Name NIGEL RUDOLPH

Job Title ARCHAEOLOGIST, FLORIDA PUBLIC ARCHAEOLOGY NETWORK

Address 928 NW 9TH PL

Phone 941-773-9540

Street

GAINESVILLE

FL

City

State

32601

Zip

Email nrudolph@usf.edu

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

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

Representing FPAN

Appearing at request of Chair: [] Yes [X] 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)

12/9/19
Meeting Date

SB 220
Bill Number (if applicable)

Topic African American Cemeteries

Amendment Barcode (if applicable)

Name Sarah Miller

Job Title Florida Public Archaeology Network Director

Address 215 Argonaut Rd
Street

Phone 604-392-7829

SA FL 32086
City State Zip

Email semiller88@yahoo.com

Speaking: For Against Information

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

Representing Florida Public Archaeology Network / Society Historical Archaeology

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)

12/9/19
Meeting Date

SB 220
Bill Number (if applicable)

Topic African American Cemeteries

Amendment Barcode (if applicable)

Name Rebecca O'Sullivan

Job Title Public Archaeology Coordinator

Address 2321 14th Ave W
Street

Phone 813-909-3084

Bradenton FL 34205
City State Zip

Email rosulliv@usf.edu

Speaking: For Against Information

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

Representing Florida Public Archaeology Network

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)

12-9-18 19

Meeting Date

SB220

Bill Number (if applicable)

Topic African American Cemeteries

Amendment Barcode (if applicable)

Name Jeffrey Moutos

Job Title Regional Director, archaeologist

Address 2321 14th Ave W

Phone 941.704.2521 / 813.396.2327

Bradenton FL 34205

Email jmoutos@usf.edu

Speaking: For Against Information

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

Representing Florida Public Archaeology Network

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)

12/9/19
Meeting Date

SB 220
Bill Number (if applicable)

Topic ~~AB~~ SB 220 - ABANDONED CEMETERIES Amendment Barcode (if applicable)

Name JEFFREY SHANKS

Job Title ARCHAEOLOGIST

Address 1425 SILVER PINE LANE Phone 850-694-8600

Street

TALLAHASSEE, FL 32312

City

State

Zip

Email jshanks@gmail.com

Speaking: For Against Information

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

Representing NATIONAL PARK SERVICE

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 374

INTRODUCER: Senator Rouson

SUBJECT: Housing Discrimination

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.	Ponder	McVaney	GO	Favorable
3.			RC	

I. Summary:

SB 374 amends ss. 760.34, F.S., and 760.35, F.S., to allow a person alleging housing discrimination under the Florida Fair Housing Act (FFHA) to file a civil action regardless of whether the aggrieved person has exhausted his or her administrative remedies. Accordingly, the aggrieved person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations (Commission);
- The Commission has resolved a complaint (if the aggrieved person chose to file one); or
- Any particular amount of time has passed since the aggrieved person filed a complaint with the Commission.

The bill prohibits an aggrieved person from filing a civil action under the FFHA in two instances: (i) if the claimant has consented to a conciliation agreement obtained by the Commission, other than to enforce the terms of the conciliation agreement; or (i) if an administrative law judge has commenced a hearing.

The bill, in making the FFHA substantially equivalent to the federal Fair Housing Act, enhances the opportunity for the Commission to continue to receive its federal funding of approximately of approximately \$597,189 (based on a six-year average of funding).

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Commission on Human Relations

The Commission was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws. The Commission investigates complaints of discrimination under the

Florida Fair Housing Act of 1983, the Florida Civil Rights Act of 1992, and the Whistle-Blower's Act of 1999. The Commission is certified as a "substantially equivalent" agency by the United States Department of Housing and Urban Development (HUD) and, through annual work share agreements, receives and investigates housing discrimination complaints referred by HUD. HUD provides funding to the Commission through the Fair Housing Assistance Program (FHAP) for processing complaints, training, technical assistance, and creating and maintaining data information systems.

The Florida Fair Housing Act

The FFHA is modeled after the federal Fair Housing Act.¹ The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.² In addition, the FFHA affords protection to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.³

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.⁴ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁵ The Commission may also decide to resolve the complaint and eliminate or correct the discriminatory housing practice through conciliation.⁶ If the Commission is unable to obtain voluntary compliance within 180 days after a complaint is filed, the aggrieved person may initiate a civil action or file a petition for an administrative determination.⁷ If the Commission finds reasonable cause to believe that housing discrimination has occurred, the aggrieved person may request that the Attorney General bring an action against the respondent.⁸ A civil action must be commenced within two years after the alleged discriminatory act occurred.⁹ The court may "continue" (this means the case is held in abeyance pending the settlement) a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.¹⁰ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.¹¹

¹ Chapter 760, part II, F.S., is the Florida Fair Housing Act. Florida Fair Housing Commission, Housing Act, <https://fchr.myflorida.com/history-of-the-florida-commission-on-human-relations> (last visited Dec. 4, 2019),

² Section 760.23(1), F.S.

³ Sections 760.23(6)-(9), F.S.

⁴ Section 760.34(1) and (2), F.S.

⁵ Section 760.34(1), F.S.

⁶ *Id.*

⁷ Section 760.34(4), F.S.

⁸ *Id.*

⁹ Section 760.35(1), F.S.

¹⁰ *Id.*

¹¹ Section 760.35(2), F.S.

Remedies available under the FFHA include fines and actual punitive damages.¹² The court may also award reasonable attorney fees and costs to the Commission.¹³

If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.¹⁴

The Commission, or any local agency certified as substantially equivalent, may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law.¹⁵ The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.¹⁶

The Federal Fair Housing Act

Substantially Equivalent Agencies

HUD administers and enforces the federal Fair Housing Act (FHA).¹⁷ The FHA recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful housing discrimination.¹⁸ HUD may certify a state or local government agency as “substantially equivalent” if HUD determines that the state or local law and the FHA are substantially equivalent with respect to:

- The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;
- The procedures followed by such agency;
- The remedies available to such agency; and
- The availability of judicial review of such agency’s action.¹⁹

HUD had developed a two-step process of substantial equivalency certification. The first step considers the adequacy of the law, meaning that the law which the agency administers facially provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the FHA.²⁰ A determination of the adequacy of a state or local fair housing law “on its face” is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives,

¹² Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.

¹³ Section 760.34(7)(c), F.S.

¹⁴ Section 760.35(3), F.S.

¹⁵ Sections 760.22(9) and 760.34(8), F.S.

¹⁶ Section 760.34(8), F.S.

¹⁷ 42 U.S.C. § 3601, et seq.

¹⁸ 42 U.S.C. § 3610.

¹⁹ *Id.*

²⁰ 24 C.F.R. § 115.201.

rules of procedure, judicial decisions, or interpretations of the law by competent authorities will be considered in making the determination.²¹ The second step considers the adequacy of performance of the law, meaning that in operation the fair housing law provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the FHA.²²

If a housing discrimination complaint is filed with HUD under the FHA and the complaint falls within the jurisdiction of a substantially equivalent agency, HUD must refer the complaint to the local or state agency and may take no further action, except under limited circumstances.²³

The Commission serves as the certified substantially equivalent HUD agency in Florida.²⁴ Through annual work-share agreements with HUD, the Commission accepts and investigates housing discrimination cases from HUD. According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2017-18 Annual Reports, housing complaints were, on average, 15 percent of all complaints received by the Commission.²⁵

The Fair Housing Assistance Program

A substantially equivalent agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).²⁶ FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the FHA. Financial assistance provides support for:

- The processing of dual-filed complaints;
- Training under the FHA and the agencies' fair housing law;
- The provision of technical assistance;
- The creation and maintenance of data and information systems;
- The development and enhancement of education and outreach projects, special enforcement efforts, partnership initiatives, and other fair housing projects.²⁷

The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission. In Fiscal Year 2018-2019, these payments totaled \$507,061 for the 2018 grant period. This amount was 45.99 percent of the Commission's Operating Trust Fund for that year.²⁸ In Fiscal Year 2017-18,

²¹ 24 C.F.R. § 115.204.

²² 24 C.F.R. § 115.201.

²³ 42 U.S.C. 3610.

²⁴ HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, Fair Housing Assistance Program (FHAP) Agencies, https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Dec. 4, 2019).

²⁵ Florida Commission on Human Relations, Annual Reports, available at <https://fchr.myflorida.com/annual-reports/> (last visited Dec. 4, 2019)

²⁶ United States Department of Housing and Urban Development, Fair Housing Assistance Program (FHAP), https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Dec. 4, 2019).

²⁷ 24 C.F.R. § 115.300.

²⁸ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (Oct. 31, 2019) (on file with the Senate Committee on Judiciary).

these payments totaled \$611,721, which was 49.89 percent of the Commission's Operating Trust Fund.²⁹ The six-year average of trust fund revenue received from HUD is \$597,189.

Exhaustion of Administrative Remedies

A series of recent judicial decisions regarding the applicability of administrative remedies under the FFHA have threatened the Commission's status as a substantially equivalent HUD agency.

In 2004, the Fourth District Court of Appeal held in *Belletete v. Halford* that an aggrieved person must first exhaust administrative remedies under the FFHA before commencing a civil action in state court, citing the doctrine of exhaustion of administrative remedies.³⁰ The Court's holding was not based upon an analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a brief analysis of what it considered to be an analogous provision of the Florida Civil Rights Act. The *Belletete* holding has been criticized by the Florida Attorney General, and has been rejected by the U.S. District Court for the Southern District of Florida.³¹ Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal, have adopted the *Belletete* holding, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.³²

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of the FFHA in *Belletete* requiring the exhaustion of administrative remedies renders the Florida law fundamentally inconsistent with federal law. The FHA explicitly allows an aggrieved person to commence a civil action whether or not a complaint has been filed with HUD and without regard to the status of any such complaint.³³ Efforts to amend the FFHA during the 2014,³⁴ 2016,³⁵ 2018,³⁶ and 2019³⁷ legislative sessions were unsuccessful and courts continue to apply the *Belletete* rule in FFHA civil actions.

On July 2, 2015, HUD notified the Commission that it would suspend the Commission's participation in FHAP if the FFHA was not amended by January 25, 2016, to overcome the judicially-created requirement that a plaintiff exhaust their administrative remedies as a

²⁹ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).

³⁰ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *See also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. Black's Law Dictionary (10th ed. 2014), exhaustion of remedies.

³¹ In *Milsap v. Cornerstone Residential Management, Inc.*, 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on *Belletete* as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General intervened and argued *Belletete* was wrongly decided, the court reversed itself and reinstated the FFHA claims. *See*, 2010 WL 427436 (S. D. Fla. 2010).

³² *Sun Harbor Homeowners Ass'n v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012); *State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA 2015); *HOPE v. SPV Realty, L.C.*, Case No. 14-32184-CA-01 (Fla. 11th Cir. Ct. April 30, 2015).

³³ 42 U.S.C. § 3613.

³⁴ SB 410 (Senator Braynon) and HB 453 (Representative Watson).

³⁵ SB 7008 (Senate Governmental Oversight and Accountability) and HB 339 (Representative Rouson).

³⁶ SB 306 (Senator Rouson) and HB 853 (Representative Davis).

³⁷ 32 SB 958 (Senator Rouson) and HB 565 (Representatives Williams and Davis).

condition precedent to filing a housing discrimination claim under the FFHA.³⁸ In light of the legislative calendar, HUD agreed to extend the deadline to amend the FFHA until March 12, 2016.³⁹

On March 16, 2016, HUD recognized pending litigation in the Third District Court of Appeal⁴⁰ and vowed to refrain from making any decision regarding suspension of the Commission's participation in FHAP during the pendency of the judicial proceedings.⁴¹ In December 2016, the Third District Court of Appeal applied the *Belletete* rule and held that a plaintiff must exhaust all administrative remedies before commencing an action in civil court, determining that "[w]hether the [Florida Fair Housing Act] should be amended to conform precisely to the federal [Fair Housing Act] is a matter for the Legislature."⁴²

On August 8, 2019, HUD notified the Commission that the FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act.⁴³ The Commission continues to risk suspension in FHAP if the legislature does not amend the FFHA.

Effect of Proposed Changes:

The bill amends ss. 760.34, F.S., and 760.35, F.S., to provide that an aggrieved person is not required to exhaust his or her administrative remedies before commencing a civil action under the FFHA. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Commission;
- The Commission has resolved a complaint (if the aggrieved person chose to file one); or
- Any particular amount of time has passed since the aggrieved person filed a complaint with the Commission.

The bill prohibits an aggrieved person from filing a civil action under the FFHA in two instances: (i) if the claimant has consented to a conciliation agreement obtained by the Commission, other than to enforce the terms of the conciliation agreement; or (i) if an administrative law judge has commenced a hearing. These provisions are consistent with the federal Fair Housing Act.

The bill makes conforming changes to 760.07, F.S.

The act takes effect upon becoming law.

³⁸ Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 2, 2015) (on file with the Senate Committee on Judiciary).

³⁹ Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (Mar. 16, 2016)(on file with the Senate Committee on Judiciary).

⁴⁰ *Housing Opportunities Project v. SPV*, 212 So. 3d 419 (Fla. 3rd DCA 2016).

⁴¹ Letter from Sara K. Pratt, *supra*, note 46.

⁴² *Housing Opportunities Project v. SPV*, 212 So. 3d 419 at 424

⁴³ Letter from Carlos Osegueda, Office of Fair Housing and Equal Opportunity Region IV Director, Subject: Post-Suspension Performance Assessment Report, (Aug. 8, 2019) (on file with the Senate Committee on Governmental Oversight and Accountability).

III. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The passage of the bill appears necessary to allow the Commission to continue to receive federal reimbursement for the Commission's resolution of housing discrimination cases. Without the bill, the Commission may be disqualified from receiving this federal funding.

V. Technical Deficiencies:

None.

VI. Related Issues:

On April 5, 2019, HUD notified the Commission that it was suspended from participating in the FHAP for a period of 90 days, effective April 11, 2019, and ending on July 11, 2019.⁴⁴ The suspension was a direct result of the agency's failure to adequately address four identified deficiencies: (i) staffing and workload management; (ii) quality management and case processing; (iii) conciliation and public interest requirements; and (iv) budget and finance requirements.⁴⁵

During the suspension period, HUD did not refer complaints to the Commission and did not accept cases for dual-filing from the Commission. HUD did pay the Commission for cases dual-filed and those completed during the suspension period which met quality and timeliness standards.

Between June 28, 2019, and July 16, 2019, pursuant to federal regulations, HUD conducted a remote performance assessment to determine whether the deficiencies resulting in suspension had been remedied and/or eliminated.⁴⁶ On August 8, 2019, HUD issued its Post-Suspension Performance Assessment Report (Post-Suspension Report) advising the Commission of its conclusion that the critical performance standards and benchmarks were not met, and that it would recommend withdrawal of the Commission's certification to the Assistant Secretary.⁴⁷ Within the Post-Suspension Report, HUD made note of the continuing substantial equivalency issues that remain because the Florida fair housing law has not been amended to cure the judicially created exhaustion requirement.⁴⁸ HUD acknowledged the Commission's efforts to file legislation to clarify the discrepancy and that substantial equivalency issue was not specifically a part of the Performance Improvement Plan or suspension.⁴⁹

On September 25, 2019, Anna Maria Farias, the Assistant Secretary for Fair Housing and Equal Opportunity, notified the Commission of her decision to place the Commission on a one year probationary status instead of withdrawing the Commission's certification.⁵⁰ Within 30 days of the end of the one-year probationary period, HUD will re-assess the Commission's performance and make a decision regarding the Commission's continued participation in FHAP.

Currently, there are two separate issues affecting the Commission's certification in the FHAP. The bill addresses and cures one of these – the substantial equivalence issue. The second issue relates to the Commission's prior suspension and current probationary status. In this regard, the Commission advises that it is in frequent communication with HUD and continues to make strides in remedying the deficiencies and demonstrating its ability to serve the citizens of Florida. Additionally, for fiscal year 2019-2020, the Legislature authorized 8 additional full time

⁴⁴ Letter from Carlos Osegueda, Office of Fair Housing and Equal Opportunity Region IV Director, Subject: Suspension from the Fair Housing Assistance Program (April 5, 2019)(on file with the Senate Committee on Governmental Oversight and Accountability).

⁴⁵ *Id.*

⁴⁶ Letter from Carlos Osegueda, *supra*, note 43.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Letter from Anna Maria Farias, Assistant Secretary for Fair Housing and Equal Opportunity (Sept. 25, 2019) (on file with the Senate Committee on Governmental Oversight and Accountability).

equivalent positions and appropriated associated funding to the Commission to address the staffing and workload issues which were identified deficiencies related to the suspension. The Commission instructions that all of these positions have been filled.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

VIII. 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 Rouson

19-00605-20

2020374__

1 A bill to be entitled
 2 An act relating to housing discrimination; amending s.
 3 760.07, F.S.; removing housing discrimination as a
 4 cause of action for certain relief and damages
 5 stemming from violations of the Florida Civil Rights
 6 Act of 1992; amending s. 760.34, F.S.; revising the
 7 conditions under which an aggrieved person may
 8 commence a civil action in any appropriate court
 9 against a specified respondent to enforce specified
 10 rights; providing that the aggrieved person does not
 11 need to pursue certain other remedies before
 12 commencing a civil action; making technical changes;
 13 amending s. 760.35, F.S.; authorizing, rather than
 14 requiring, a civil action to commence within a
 15 specified period after an alleged discriminatory
 16 housing practice; authorizing an aggrieved person to
 17 commence a civil action regardless of certain
 18 circumstances; prohibiting an aggrieved person from
 19 filing a specified action in certain circumstances;
 20 providing an exception; prohibiting an aggrieved
 21 person from commencing a specified civil action if an
 22 administrative law judge has commenced a hearing on
 23 the record on the allegation; making technical
 24 changes; providing an effective date.
 25
 26 Be It Enacted by the Legislature of the State of Florida:
 27
 28 Section 1. Section 760.07, Florida Statutes, is amended to
 29 read:

Page 1 of 8

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

19-00605-20

2020374__

30 760.07 Remedies for unlawful discrimination.—Any violation
 31 of any Florida statute that makes ~~making~~ unlawful discrimination
 32 because of race, color, religion, gender, pregnancy, national
 33 origin, age, handicap, or marital status in the areas of
 34 education, employment, ~~housing,~~ or public accommodations gives
 35 rise to a cause of action for all relief and damages described
 36 in s. 760.11(5), unless greater damages are expressly provided
 37 for. If the statute prohibiting unlawful discrimination provides
 38 an administrative remedy, the action for equitable relief and
 39 damages provided for in this section may be initiated only after
 40 the plaintiff has exhausted his or her administrative remedy.
 41 The term "public accommodations" does not include lodge halls or
 42 other similar facilities of private organizations which are made
 43 available for public use occasionally or periodically. The right
 44 to trial by jury is preserved in any case in which the plaintiff
 45 is seeking actual or punitive damages.
 46 Section 2. Section 760.34, Florida Statutes, is amended to
 47 read:
 48 760.34 Enforcement.—
 49 (1) Any person who claims to have been injured by a
 50 discriminatory housing practice or who believes that he or she
 51 will be injured by a discriminatory housing practice that is
 52 about to occur may file a complaint with the commission.
 53 Complaints shall be in writing and ~~shall~~ contain such
 54 information and be in such form as the commission requires. Upon
 55 receipt of such a complaint, the commission shall furnish a copy
 56 to the person or persons who allegedly committed the
 57 discriminatory housing practice or are about to commit the
 58 alleged discriminatory housing practice. Within 100 days after

Page 2 of 8

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

19-00605-20

2020374__

59 receiving a complaint, or within 100 days after the expiration
 60 of any period of reference under subsection (3), the commission
 61 shall investigate the complaint and give notice in writing to
 62 the ~~aggrieved~~ person ~~aggrieved~~ whether it intends to resolve it.
 63 If the commission decides to resolve the complaint, it shall
 64 proceed to try to eliminate or correct the alleged
 65 discriminatory housing practice by informal methods of
 66 conference, conciliation, and persuasion. Insofar as possible,
 67 conciliation meetings shall be held in the cities or other
 68 localities where the discriminatory housing practices allegedly
 69 occurred. Nothing said or done in the course of such informal
 70 endeavors may be made public or used as evidence in a subsequent
 71 proceeding under ss. 760.20-760.37 without the written consent
 72 of the persons concerned. Any employee of the commission who
 73 makes public any information in violation of this provision is
 74 guilty of a misdemeanor of the first degree, punishable as
 75 provided in s. 775.082 or s. 775.083.

76 (2) Any person who files a complaint under subsection (1)
 77 must do so ~~be filed~~ within 1 year after the alleged
 78 discriminatory housing practice occurred. The complaint must be
 79 in writing and shall state the facts upon which the allegations
 80 of a discriminatory housing practice are based. A complaint may
 81 be reasonably and fairly amended at any time. A respondent may
 82 file an answer to the complaint against him or her and, with the
 83 leave of the commission, which shall be granted whenever it
 84 would be reasonable and fair to do so, may amend his or her
 85 answer at any time. Both the complaint and the answer must ~~shall~~
 86 be verified.

87 (3) ~~If wherever~~ a local fair housing law provides rights

Page 3 of 8

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

19-00605-20

2020374__

88 and remedies for alleged discriminatory housing practices which
 89 are substantially equivalent to the rights and remedies provided
 90 in ss. 760.20-760.37, the commission shall notify the
 91 appropriate local agency of any complaint filed under ss.
 92 760.20-760.37 which appears to constitute a violation of the
 93 local fair housing law, and the commission shall take no further
 94 action with respect to such complaint if the local law
 95 enforcement official has, within 30 days after ~~from~~ the date the
 96 alleged offense was brought to his or her attention, commenced
 97 proceedings in the matter. In no event shall the commission take
 98 further action unless it certifies that in its judgment, under
 99 the circumstances of the particular case, the protection of the
 100 rights of the parties or the interests of justice require such
 101 action.

102 (4) ~~If, within 180 days after a complaint is filed with the~~
 103 ~~commission or within 180 days after expiration of any period of~~
 104 ~~reference under subsection (3), the commission has been unable~~
 105 ~~to obtain voluntary compliance with ss. 760.20-760.37, The~~
 106 aggrieved person aggrieved may commence a civil action in any
 107 appropriate court against the respondent named in the complaint
 108 or petition for an administrative determination under ~~pursuant~~
 109 ~~to~~ s. 760.35 to enforce the rights granted or protected by ss.
 110 760.20-760.37 and is not required to petition for an
 111 administrative hearing or exhaust administrative remedies before
 112 commencing such action. If, as a result of its investigation
 113 under subsection (1), the commission finds there is reasonable
 114 cause to believe that a discriminatory housing practice has
 115 occurred, at the request of the aggrieved person ~~aggrieved~~, the
 116 Attorney General may bring an action in the name of the state on

Page 4 of 8

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

19-00605-20 2020374__

117 behalf of the aggrieved person to enforce ~~the provisions of~~ ss.
118 760.20-760.37.

119 (5) In any proceeding brought ~~under pursuant to~~ this
120 section or s. 760.35, the burden of proof is on the complainant.

121 (6) ~~If whenever~~ an action filed in court ~~under pursuant to~~
122 this section or s. 760.35 comes to trial, the commission shall
123 immediately terminate all efforts to obtain voluntary
124 compliance.

125 (7) (a) The commission may institute a civil action in any
126 appropriate court if it is unable to obtain voluntary compliance
127 with ss. 760.20-760.37. The commission does need not have to
128 petition petitioned for an administrative hearing or exhaust
129 exhausted its administrative remedies before prior to bringing a
130 civil action.

131 (b) The court may impose the following fines for each
132 violation of ss. 760.20-760.37:

133 1. Up to \$10,000, if the respondent has not previously been
134 found guilty of a violation of ss. 760.20-760.37.

135 2. Up to \$25,000, if the respondent has been found guilty
136 of one prior violation of ss. 760.20-760.37 within the preceding
137 5 years.

138 3. Up to \$50,000, if the respondent has been found guilty
139 of two or more violations of ss. 760.20-760.37 within the
140 preceding 7 years.

141
142 In imposing a fine under this paragraph, the court shall
143 consider the nature and circumstances of the violation, the
144 degree of culpability, the history of prior violations of ss.
145 760.20-760.37, the financial circumstances of the respondent,

19-00605-20 2020374__

146 and the goal of deterring future violations of ss. 760.20-
147 760.37.

148 (c) The court shall award reasonable ~~attorney attorney's~~
149 fees and costs to the commission in any action in which the
150 commission prevails.

151 (8) Any local agency certified as substantially equivalent
152 may institute a civil action in any appropriate court, including
153 circuit court, if it is unable to obtain voluntary compliance
154 with the local fair housing law. The agency does need not have
155 to petition petitioned for an administrative hearing or exhaust
156 exhausted its administrative remedies before prior to bringing a
157 civil action. The court may impose fines as provided in the
158 local fair housing law.

159 Section 3. Section 760.35, Florida Statutes, is amended to
160 read:

161 760.35 Civil actions and relief; administrative
162 procedures.—

163 (1) An aggrieved person may commence a civil action ~~shall~~
164 ~~be commenced~~ no later than 2 years after an alleged
165 discriminatory housing practice has occurred. However, the court
166 shall continue a civil case brought under pursuant to this
167 section or s. 760.34 ~~from time to time~~ before bringing it to
168 trial if the court believes that the conciliation efforts of the
169 commission or local agency are likely to result in satisfactory
170 settlement of the discriminatory housing practice complained of
171 in the complaint made to the commission or to the local agency
172 and which practice forms the basis for the action in court. Any
173 sale, encumbrance, or rental consummated before prior to the
174 issuance of any court order issued under the authority of ss.

19-00605-20

2020374__

175 760.20-760.37 and involving a bona fide purchaser, encumbrancer,
 176 or tenant without actual notice of the existence of the filing
 177 of a complaint or civil action under ~~the provisions of ss.~~
 178 760.20-760.37 ~~is shall~~ not be affected.

179 (2) An aggrieved person may commence a civil action under
 180 this section regardless of whether a complaint has been filed
 181 under s. 760.34(1) and regardless of the status of any such
 182 complaint. If the commission has obtained a conciliation
 183 agreement with the consent of an aggrieved person under s.
 184 760.36, the aggrieved person may not file any action under this
 185 section regarding the alleged discriminatory housing practice
 186 that forms the basis for the complaint except for the purpose of
 187 enforcing the terms of the conciliation agreement.

188 (3) An aggrieved person may not commence a civil action
 189 under this section regarding an alleged discriminatory housing
 190 practice if an administrative law judge has commenced a hearing
 191 on the record on the allegation.

192 (4)(2) If the court finds that a discriminatory housing
 193 practice has occurred, it shall issue an order prohibiting the
 194 practice and providing affirmative relief from the effects of
 195 the practice, including injunctive and other equitable relief,
 196 actual and punitive damages, and reasonable attorney ~~attorney's~~
 197 fees and costs.

198 (5) (a) (3) (a) If the commission is unable to obtain
 199 voluntary compliance with ss. 760.20-760.37 or has reasonable
 200 cause to believe that a discriminatory practice has occurred:

- 201 1. The commission may institute an administrative
- 202 proceeding under chapter 120; or
- 203 2. The aggrieved person ~~aggrieved~~ may request

19-00605-20

2020374__

204 administrative relief under chapter 120 within 30 days after
 205 receiving notice that the commission has concluded its
 206 investigation under s. 760.34.

207 (b) Administrative hearings shall be conducted under
 208 ~~pursuant to~~ ss. 120.569 and 120.57(1). The respondent must be
 209 served written notice by certified mail. If the administrative
 210 law judge finds that a discriminatory housing practice has
 211 occurred or is about to occur, he or she shall issue a
 212 recommended order to the commission prohibiting the practice and
 213 recommending affirmative relief from the effects of the
 214 practice, including quantifiable damages and reasonable attorney
 215 ~~attorney's~~ fees and costs. The commission may adopt, reject, or
 216 modify a recommended order only as provided under s. 120.57(1).
 217 Judgment for the amount of damages and costs assessed pursuant
 218 to a final order by the commission may be entered in any court
 219 having jurisdiction thereof and may be enforced as any other
 220 judgment.

221 (c) The district courts of appeal may, upon the filing of
 222 appropriate notices of appeal, review final orders of the
 223 commission under ~~pursuant to~~ s. 120.68. Costs or fees may not be
 224 assessed against the commission in any appeal from a final order
 225 issued by the commission under this subsection. Unless
 226 specifically ordered by the court, the commencement of an appeal
 227 does not suspend or stay an order of the commission.

228 (d) This subsection does not prevent any other legal or
 229 administrative action provided by law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/9/2019
Meeting Date

374
Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301
City State Zip

Email Taghobby@aol.com

Speaking: For Against Information

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

Representing Florida State Conference of NAACP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/9/19
Meeting Date

374
Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave, Main Library, 8th Fl.
Street

Phone 954-253-7320

Ft. Lauderdale FL 33301
City State Zip

Email dsainvil@broward.org

Speaking: For Against Information

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

Representing Broward County Bd. of County Commissioners

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)

12/9/2019

Meeting Date

374

Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director

Address 215 S. Monroe St.

Phone 850-228-4243

Street

Tallahassee

FL

32301

Email zsmith@aar.org

City

State

Zip

Speaking: For Against Information

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

Representing AARP Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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)

12/9/2019

Meeting Date

SB 374

Bill Number (if applicable)

Topic SB 374 Housing Discrimination

Amendment Barcode (if applicable)

Name Michelle M. Wilson

Job Title Executive Director

Address 4075 Esplanade Way Room 110

Phone (850) 488-2082

Street

Tallahassee

FL

32399

City

State

Zip

Email michelle.wilson@fchr.my
florida.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



U. S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity, Region IV
Five Points Plaza
40 Marietta Street
Atlanta, Georgia 30303-2806

CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND EMAIL

April 5, 2019

Michelle M. Wilson, MBA
Executive Director
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Dear Ms. Wilson:

SUBJECT: Suspension from the Fair Housing Assistance Program

The purpose of this letter is to inform you that the Florida Commission on Human Relations (FCHR) is suspended from participation in the Fair Housing Assistance Program (FHAP). This suspension is effective April 11, 2019 and shall last for 90 days, ending on July 11, 2019.

During the period of suspension, HUD, as required by 24 C.F.R. §115.210(b)(3), will not refer complaints to FCHR, nor will HUD accept cases from FCHR for dual-filing. As a result, the agency must advise complainants of their right to either file their complaints with FCHR or directly with HUD. The agency will be paid for cases dual-filed as of April 11, 2019 and completed during the suspension which meet the quality and timeliness standards outlined in the FY 2019 Criteria for Processing.

Specific Reasons for Suspension

FCHR was placed on a Performance Improvement Plan (PIP) for an initial 90-day period effective June 1, 2018 – August 31, 2018. An additional 60-day extension was granted with a new ending date of October 31, 2018. On November 6 – 7, 2018, a follow-up performance assessment was conducted to determine whether FCHR met the required benchmarks to satisfy the PIP. During the onsite, the agency was still found to be failing. A detailed analysis of the agency's performance under the PIP is outlined in the enclosed post-PIP Performance Assessment Report.

This suspension is the direct result of the agency's failure to adequately address the deficiencies discussed below in a manner that will lead to long-term success. Indeed, while the agency achieved progress on reducing its backlog of inquiries and aged cases, it was able to do so only because of the intake moratorium in effect since July 1, 2017, and the enforcement moratorium in effect between November 15, 2017 and April 30, 2018. The fundamental challenges facing the FCHR have not yet been addressed.

HUD's mission is to create strong, sustainable, inclusive communities and quality, affordable homes for all.

I. Staffing and Workload Management

Based on an analysis of FCHR's workload, the recommended level of staff for FCHR is eight permanent investigators and four permanent intake analysts. The agency hired six OPS (temporary) staff persons between April 4, 2018 and June 8, 2018. However, five separated voluntarily or involuntarily from the agency before the end of the PIP performance period. In early November of 2018, the agency hired five replacement investigative and intake staff, bringing the total of non-management level staff members to 10: six investigators and four intake analysts. Four investigators were considered permanent with the remaining six staff considered temporary and without any benefits or certainty of continued employment. Earlier this year, one of the experienced intake staff left shortly after being promoted from temporary to permanent without giving a reason for his departure. Consequently, the current non-management level staff consists of six investigators and three intake analysts. Four investigators are considered permanent with the remaining staff considered temporary.

Currently, the three experienced investigators are each carrying an inventory of more than 60 cases. The three new investigators, with training, may be able take on at least 20 cases each from the three experienced investigators, thus making the caseload of the latter more manageable. However, even if all six investigators were to remain with the agency, the agency's staffing situation is not sustainable. For example, if all open cases were divided equally among the investigators, this would still have them carrying a load of 37 cases each, which is almost double the HUD recommended caseload.

Absent fundamental changes in the management and administration of the organization, history indicates that the agency will continue to fall behind, and the situation that led to the 2018 PIP will reoccur, with intake and enforcement moratoriums continuing to be necessary. High staff turnover and the inability of the agency to hire staff when it needs to are fundamental problems that have not been but need to be addressed.

II. Quality Management and Case Processing

A. Inquiries:

The PIP required that the agency assess all inquiries received after May 3, 2018 for jurisdiction and upload all relevant information into HEMS within 30 days of receipt of a signed complaint or legally acceptable substitute. A recent FHAP Processed Inquiries report revealed that out of the 38 inquiries with initial contact dates between November 1, 2018 – March 4, 2019, the agency closed or converted 24 (63%), or an average of six per month, of which 14 (58%) were closed or converted within 30 days. The remaining 10 inquiries ranged in ages from 32 – 98 days old at closure or conversion.

For the period between January 1, 2019 and March 4, 2019 alone, FCHR closed or converted a total of 13 inquiries, or an average of 6.5 a month, of which four (31%) were closed or converted within 30 days. The remaining nine inquiries

ranged in ages from 32 – 98 days at closure or conversion. This means that 69% of inquiries processed over the last two months were not processed timely. As of March 5, 2019, the agency had an inventory of 14 open inquiries of which seven (50%) were under 30 days old and the remaining were up to 98 days old.

B. Cases:

At the time of the November 6-7, 2018 onsite, the agency had a total of 198 open cases, of which 93 (47%) were over 100 days old, with two (2%) of those critically aged over 300 days. As of March 5, 2019, the agency had a total of 223 open cases, of which 159 (71%) were over 100 days old, with 13 (8%) of those critically aged over 300 days. Thus, the agency's case backlog continued to increase rather than decrease during the four months following the hiring of three investigators.

Between January 1, 2019 and March 4, 2019, the agency closed 43 cases, an average of 21.5 a month with six investigators. Of those cases closed, 38 (88%) were aged, with 15 (39%) of those critically aged over 300 days.

The guidelines and the PIP require that the agency utilize administrative closures only in "limited and appropriate circumstances" [24 C.F.R. §115.206(e)(2)]. However, 40% of cases closed since January 1, 2019 were closed administratively. Moreover, a random sampling of significantly aged cases that were closed as a failure to cooperate showed enough information to issue a no cause determination.

Cases Closed Between 1/1 – 3/4/2019	
No cause	18
Administrative Closure	17
Withdrawal with Resolution	5
Charge/cause	2
Conciliations	1
TOTAL	43

III. Conciliation and Public Interest Requirements

The PIP required the agency to ensure that public interest relief was not limited to training in such cases where the established facts suggested more robust relief would be necessary to protect impacted individuals beyond the Complainant. Though the agency has implemented the use of a revised Conciliation Agreement, its staff are still not engaging in effective conciliations. For example, the agency has developed a pattern of requiring the donation of \$100 or slightly more to a fair housing organization of the Respondent's choice which is not meaningful and effective relief. This problem may in part be due to the fact that FCHR are using conciliators without fair housing experience or training to handle their conciliations and the actual fair housing investigators have no input or oversight. The agency has elected to take the conciliation of its cases out of the fair housing division, at

least in part, due to the large caseload of the investigators. Though this is understandable, the result is not acceptable and reinforces the need for a more sustainable hiring system.

IV. Budget and Finance Requirements

Due to the agency not using the FHAP funds for the purpose that HUD approved (e. g., salaries), \$176,686 in administrative cost (AC) funds have gone unspent and remain in its operating trust fund. This resulted from the Florida State Legislature prohibiting the agency from using the operating trust fund to pay for salaries but instead requiring it to use the general revenue fund. The funds were more than adequate to support the addition of much needed permanent intake and investigative staff.

The agency was given the opportunity to provide a revised plan for use of the funds; however, it was not possible since the financial books had been closed on the two impacted fiscal years and there could be no reallocation of expenditures. As a result, the agency is still required to return the unspent AC funds in the amount of \$176,686 to the United States Treasury. Following are the procedures for the agency to use to document and return funds:

- A. Make a check payable to the U. S. Department of Housing and Urban Development in the amount of \$176,686. Make sure to note the following grant numbers on the check. The grant numbers are the Instrument Numbers reflected on the specific HUD-1044 that awarded the funds to the agency. Also, include a brief cover letter regarding the returned funding with a copy to the Regional Director, your Government Technical Representative and Government Technical Monitor.

Grant Number	Amount of Awarded AC Funds	Unused Amount to Return
FF204K154020	\$100,704.00	\$48,695.00
FF204K164020	\$137,321.00	\$127,991.00
TOTALS	\$238,025.00	\$176,686.00

- B. The check and correspondence must be sent to the HUD lockbox at the following address:

US Bank
 HUD-FAD Collections Ft Worth
 PO Box 6200-05
 Portland, OR 97228-6200

Conclusion

For the reasons set forth above and detailed in the enclosed post-PIP Performance Assessment Report, HUD is suspending FCHR's participation in the Fair Housing Assistance Program, effective for a 90-day period beginning April 11, 2019 until July 11, 2019. In accordance with 24 C.F.R. §115.210(6), prior to the end of the suspension, HUD will conduct a performance assessment of the agency to determine whether it is in compliance with all of the substantial

equivalency certification criteria set forth in 24 C.F.R. part 115. If it is determined that the agency has not corrected the deficiencies, the Assistant Secretary may propose to withdraw the agency's certification in accordance with 24 C.F.R. §115.210(c).

Pursuant to 24 C.F.R. §115.210(b)(1), FCHR has 30 days from the date of this letter to respond to this notification of suspension. If you have any questions, please contact Dita McCarthy, Government Technical Monitor (GTM) at (202) 236-7871 or aphrodite.t.mccarthy@hud.gov, Vicki Ray, FHIP/FHAP Branch Chief/Government Technical Representative (GTR) at (678) 732-2446 or vicki.a.ray@hud.gov, or myself at (678) 732-2905 or carlos.osegueda@hud.gov.

Sincerely,



Carlos Osegueda
FHEO Region IV Director
Office of Fair Housing and Equal Opportunity

Enclosures

cc:

Tony Jenkins, Board of Commissioners Chair
c/o Florida Blue
610 Crescent Executive Court, #600
Lake Mary, Florida 32746

Copies distributed internally to HUD:

David Enzel, Deputy Assistant Secretary for Enforcement and Programs
Joseph Pelletier, Director, Fair Housing Assistance Program

United States Department of Housing and Urban Development

Office of Fair Housing and Equal Opportunity

Region IV

**Post-Performance Improvement Plan
Performance Assessment Report**

FHAP Agency: Florida Commission on Human Relations
Address: 4075 Esplanade Way, Room 110
Tallahassee, FL 32399-7020
Director: Michelle Wilson
Director's phone number: (850) 488-7082

Assessment Purpose: To determine whether the Florida Commission on Human Relations (FCHR) engages in timely, comprehensive, and thorough fair housing complaint investigation, conciliation and enforcement activities, and therefore warrants continued certification as a participant in the Fair Housing Assistance Program. This determination is based on FCHR's compliance with the performance standards and requirements set forth in regulations implementing the Fair Housing Assistance Program, at 24 CFR part 115 and the Criteria for Processing.

Performance Period: June 1, 2018 – October 31, 2018

Date of Assessment: November 6 – 7, 2018

On-Site Remote

HUD Reviewer(s): Vicki Ray, FHIP/FHAP Branch Chief/GTR
Aphrodite McCarthy, Government Technical Monitor/Representative
Dustin Parks, Government Technical Monitor/Representative

Recommended for certification or recertification: Yes No

Table of Contents

	Page Number
I. Organizational Structure and Staffing	3-4
II. Performance Standards	
A. Performance Standard #1	5-11
B. Performance Standard #2	11-12
C. Performance Standard #5	12-13
D. Performance Standard #9	13-15
Program Requirements	
E. Budget and Finance Requirements	15-16
F. Data Support Systems Requirement	16
III. Civil Rights Requirements	16
IV. Conclusions	16-17
V. Exhibits	17
VI. Signature Page	18

Purpose: HUD FHEO conducted an onsite performance assessment on February 27-28, 2018 to determine whether the Florida Commission on Human Relations (FCHR) engaged in timely, comprehensive and thorough fair housing complaint investigation, conciliation and enforcement activities as per the requirements set forth at 24 CFR Part 115 and the *Memorandum of Understanding* in force between HUD and FCHR. The assessment revealed that the agency failed to meet certain program performance standards and requirements. As a result, FCHR was placed on a Performance Improvement Plan (PIP) for an initial 90-day period effective June 1, 2018 – August 31, 2018. An additional 60-day extension was granted with a new ending date of October 31, 2018. On November 6 – 7, 2018, a follow-up performance assessment was conducted to determine whether FCHR met the required benchmarks to satisfy the PIP. Below is an assessment of their performance during the PIP.

I. Organizational Structure

A.1. The benchmark has been met. The agency was required to provide a definitive structure of its organization describing the roles and responsibilities of each position assigned to the FHAP. Though the agency did not meet the 30-day target, it provided the organizational chart within 60 days.

A.2. The benchmark has been partially met. The agency was required to hire new permanent investigative and intake staff. The recommended level of staff for FCHR is eight permanent investigators and four permanent intake analysts. The agency hired six OPS (temporary) staff persons between April 4, 2018 and June 8, 2018, which includes the initial 45-days of the PIP. However, the following five separated voluntarily or involuntarily from the agency before the end of the PIP performance period.

- Karry Kimbler: Investigator
- Brittinee Tural: Regulatory Specialist (Intake)
- Tiffany Knox: Regulatory Specialist (Intake)
- Matthew Latch: Investigator
- Whitney Lamb: Staff Assistant

The agency subsequently hired five replacement investigative and intake staff effective November 2, 2018, bringing the total of non-management level staff members to 10: six investigators and four intake analysts. Four investigators are considered permanent with the remaining six staff considered temporary and without any benefits or certainty of continued employment. The agency indicated that it plans to continue pursuing the hiring of additional investigators and to seek permanent status for all OPS staff through the Florida legislature in order to reach the recommended staffing levels. The agency also hired Jacquelyn Dupree in August 2018 to serve as the Chief of Investigations for the housing and employment units. This brings the total of the management/supervisory level staff to three.

Current housing intake and investigative staff are as follow:

- Diana Diaz – Investigation Specialist II (permanent)
- Lisa Sutherland – Investigation Specialist II (permanent)
- Brendon Wikle – Investigation Specialist II (permanent)
- Byron Pendergraft – Investigator Specialist I (New hire - permanent)
- Shalanta Kilpatrick – Investigation Specialist I (New hire - OPS)
- Kymberly Kemp – Investigation Specialist I (New hire - OPS)
- Frank Fonseca – Regulatory Specialist (OPS)
- Maritza Donate – Regulatory Specialist (OPS)
- Angelica Mikell – Regulatory Specialist (New hire – OPS)
- Macy Brown – Regulatory Specialist (New hire – OPS)

Staff interviews were conducted with the housing unit. Staff expressed an interest in attending more substantive training, both internal and external, to better assist them in fulfilling the responsibilities of their positions. The investigators indicated that the use of early conciliation has been very helpful and assisted them with managing their caseloads. Additionally, when cases require additional investigation, expedited feedback from the legal department upon its receipt of determinations would assist the investigators in case processing as well.

- A.3. The benchmark has been met.** The agency was required to assign investigative workloads within 60 days. At the time of the onsite, the agency did not have any unassigned dual-filed complaints.
- A.4. The benchmark has been met.** The agency was required to train all new staff in intake and investigations within 30 days of hire or to notify the GTM if it was impractical to do so. The agency identified training taken by the previously hired staff that subsequently separated and provided a training plan for the recent new hires. The plan for the new hires is under review by the GTM/R to determine whether FY 2018 FHAP training funds can be used to cover the costs. The final decision will be provided under separate cover.

It should also be noted that since the onboarding of the Chief of Investigations, the agency has developed and implemented an internal training program whereby peer-to-peer instruction and/or mentoring is used to supplement external training opportunities. The agency developed a Housing Intake Training Manual and compiled a Housing Resources Manual in October 2018. The staff confirmed the use of HUD's Title VIII Complaint Intake, Investigation, and Conciliation Handbook.

- B.1. The benchmark has been met.** The agency was required to document and provide a copy of all executive efforts to obtain a representative Commission. Though the agency did not meet the 45-day target, it provided a copy of email communications to demonstrate their efforts within 90 days.

II. Performance Standards

A. Performance Standard #1: Commence complaint proceedings, carry forward such proceedings, complete investigations, issue determinations, and make final administrative dispositions in a timely manner. [24 C.F.R. § 115.206(e)(1)]

- A.1. **The benchmark has been met.** The agency was required to complete the processing of the 101 open inquiries identified at the beginning of the PIP. The agency closed or converted all 101 inquiries during the PIP.
- A.2. **The benchmark has not been met.** The agency was required to assess any inquiries received after May 3, 2018, for jurisdiction and upload all relevant information into HEMS within 30 days of receipt of a signed complaint or legally acceptable substitute.

The status update for the 30- and 45-day benchmarks revealed that out of the 37 inquiries with initial contact dates between May 4, 2018 – June 30, 2018, the agency closed or converted 14 (38%).with eight (57%) of those 14 closed or converted within 30 days of receipt of the signed Technical Assistance Questionnaire (TAQ) or 903.

The status update for the 60-day benchmarks revealed that out of 16 inquiries with initial contact dates between July 1-31, 2018, the agency closed or converted nine (56%) in less than 30 days. Three of the remaining seven open inquiries were 30 days and older.

The status update for the 90-day benchmarks revealed that out of the 18 inquiries with initial contact dates between August 1 – 31, 2018, the agency closed or converted nine (50%), of which eight (88%) were closed or converted in less than 30 days. Two of the aforementioned nine did not reflect a closure reason. The nine remaining open inquiries ranged in ages from 23 – 45 days old.

The status update for the 60-day extension benchmarks revealed that out of the 20 inquiries received with initial contact dates between September 1, 2018 – October 31, 2018, the agency closed or converted 10 (50%), nine (90%) of which were completed or converted within 30 days or less with one closed at 54 days. The 10 remaining open inquiries ranged in ages from 9 – 83 days old.

GTM/Rs Dustin Parks and Dita McCarthy conducted a review of 16 inquiries while onsite. Their assessment looked at HEMS and the agency's in-house case tracking system, Action Step. Discrepancies between the information in HEMS and Action Step were noted, as well as, other deficiencies with the agency's intake process. Specifically, it was determined during the onsite that

the agency was not consistently assessing jurisdiction appropriately or uploading all relevant information in HEMS.

The requirements found in paragraph 22 of the 2018 Contributions Agreement Schedule of Articles provide that the initial contact date is the “actual date on which a complainant first contacts the agency or HUD to inquire about filing a housing discrimination complaint, or to report an alleged discriminatory housing practice.” However, the agency has been improperly recording the initial contact date as the date the agency receives the complainant’s completed Technical Assistance Questionnaire (TAQ) rather than the actual date of complainant’s first contact with the agency.

The agency further does not have a practice of sending notices of closure for cases closed at the inquiry stage. The agency also does not include language in its 10-day letters that failing a response by a date certain, a complaint will be closed for failure to cooperate.

Inquiry # 554798

Action Step shows an initial contact date of February 21, 2018. HEMS shows an initial contact date of May 16, 2018. Action Step shows a closure date of June 5, 2018. HEMS shows an inquiry closure date of June 6, 2018. FCHR issued a 10-day letter dated May 22, 2018 which was returned to sender. There is no evidence to suggest FCHR attempted to contact the complainant via the phone or email after the letter was returned.

Inquiry # 563161

The first Action Step shows a date of August 12, 2017. HEMS shows an Initial contact date of July 10, 2017. This inquiry was closed based on lack of jurisdiction. However, a review of HEMS showed FCHR closed the inquiry because the complainant was unable to identify a condominium unit number, which, according to the file, prevented FCHR from determining the owner. The complainant provided an email from the realtor containing a requirement that no children live in the unit. FCHR could have determined the unit number and owner by interviewing the realtor. Furthermore, FCHR did not analyze this email in relation to Sec. 804(c).

Inquiry # 554930: Note Selected – Assigned to Investigator in Action Step

The first Action Step shows an initial contact date of May 14, 2018. HEMS shows an initial contact date of May 12, 2018. There was no evidence of a withdrawal form or copy of email that states complainant no longer wants to pursue in HEMS or Action Step.

Inquiry # 559816

The first Action Step shows an initial contact date of July 23, 2018. HEMS shows an initial contact date of July 17, 2018.

Inquiry # 543088

The first Action Step shows an initial contact date of November 17, 2017. HEMS shows an initial contact date of November 14, 2017.

Inquiry # 560528

The complainant had unstable housing and informed FCHR on September 7, 2018 he wanted to continue the case. However, the case was closed on September 14, 2018 due to not having a signed 903. The case file did contain a letter addressed to the complainant dated August 30, 2018 urging him to return the signed 903 in 10 days, but the letter did not require such response in the suggested timeline.

Inquiry # 557314

The first Action Step shows an initial contact date of June 19, 2018. HEMS shows an initial contact date of June 18, 2018.

Inquiry # 556580

The first Action Step shows an initial contact date of June 11, 2018. HEMS shows an initial contact date of June 6, 2018.

Inquiry # 563264

HEMS shows the initial contact date as August 29, 2018. However, the agency received a response from the complainant to its TAQ on August 28, 2018. The initial contact was before the date noted. Additionally, the inquiry was closed as a withdrawal with resolution but there was no information in HEMS regarding why the case closed after resolution or the nature of the resolution. No closure letters were in HEMS. Action Step notes indicate that the complainant called and said that she wanted to close the case because she was able to make the accommodations she wanted and purchase the property. Action Step showed that FCHR had her email address but no evidence of closure letters or an email closing case.

Inquiry # 555674

This case was closed based on an overly limited standard of complainant standing. HEMS showed the agency found the case to be non-jurisdictional because the person making the complaint failed to provide a Power of Attorney (POA) for the alleged complainant, her disabled adult son. The mother lived in the community and was given a violation notice based on her adult disabled son staying with her beyond two weeks as a visitor. However, the mother stated her son lived with her full time and was a resident. Legal required her to have a POA for him though she had standing as a resident and thus should not have needed to provide a POA. Legal forwarded the complainant a Notice of Right to Amend (NORTA). Complainant's failure to provide the POA as requested in the NORTA resulted in the closure as a failure to cooperate. No Closure letters were sent.

Inquiry # 557696

Initial contact date was reflected as June 22, 2018 and the case closed on July 18, 2018 for lack of jurisdiction. However, there was no additional information to indicate why the case was found to be non-jurisdictional. There were no closure letters in HEMS or in Action Step.

A note in Action Step indicated on October 23, 2018 that the complainant called the agency to determine the status of his case but confirmed that the only information was that the case had been closed as non-jurisdictional and no letters were mailed to the complainant.

Inquiry # 549057

Initial contact date in HEMS shows February 22, 2018 and closure on June 6, 2018 as a failure to cooperate. HEMS had no tracking information on status or 10-day letters. The 10-day letter sent did not contain a statement to the effect that if the complainant fails to respond by the date certain, the complaint would be dismissed. In Action Step there was no record or information to show how the complaint came in or how it originated.

Inquiry # 556549

HEMS shows initial contact with complainant was June 6, 2018 and closure on July 25, 2018 as a withdrawal without resolution. There was no information regarding the withdrawal; only the allegations and the TAQ response. Action Step notes indicated that the 903 was drafted and mailed on March 28, 2018. The complainant called later indicating that he had concerns about filing a complaint after contacting the agency. He indicated that he was afraid to file. There were no notes indicating intake informed him about the prohibition against retaliation.

Inquiry # 549533

HEMS initial contact date was March 2, 2018. This is the date the complainant's response to the TAQ was received by the agency, not the actual initial contact. HEMS contains only allegations and the TAQ response but no additional information or closure documents.

Action Step contained additional documentation not found in HEMS and showed the original claims were landlord tenant and not fair housing. As a result, Legal sent a NORTA informing the complainant that his case did not appear jurisdictional, but that he could amend the inquiry to add jurisdictional claims; failing adequate amending, it would be closed. It was subsequently closed on June 14, 2018 for failure to cooperate.

Inquiry # 543362

HEMS initial contact date was reflected as November 27, 2017. There was no information in HEMS other than the TAQ response which was dated November 20, 2017, prior to initial contact listed. Action Step shows the

inquiry was assigned to intake on November 27, 2018. Intake sent an undated request for additional information with a deadline of February 22, 2018. It was subsequently closed as failure to cooperate on June 5, 2018.

Inquiry # 536757

HEMS initial contact date is reflected as March 16, 2017, the date referred from HUD. Action Step shows it was a duplicate case and it was closed on July 7, 2018.

- A.3. The benchmark has been met.** The agency was required to assign the 59 dual-filed cases identified at the beginning of the PIP. The agency assigned all 59 cases to investigators during the PIP.
- A.4. The benchmark has been met.** The agency was required to assign complaints for investigation within 14 days of dual-filing or HUD referral for any jurisdictional complaints received after May 3, 2018. Though the agency struggled with assigning cases within 14 days at the beginning of the PIP, it demonstrated improvement during the final reporting periods.

The status update on the 30- and 45-day benchmarks revealed that of the 53 cases dual-filed between May 4, 2018 – June 30, 2018, the agency assigned 18 (34%) to investigators, of which four (17%) were assigned within 14 days of dual-filing or HUD referral, and 35 (66%) remained unassigned. Of those unassigned, 30 (86%) were aged 14 days or older since dual-filing.

The status update on the 60-day benchmarks revealed that out of 45 cases dual-filed between July 1-31, 2018, the agency assigned 14 to investigators and 31 were unassigned.

The status update on the 90-day benchmarks revealed that out of 39 cases dual-filed between August 1-31, 2018, the agency assigned all 39 for investigation, 35 (90%) within 14 days of filing and the remaining four within 20 days.

The status update on the 60-day extension benchmarks revealed that out of 55 cases dual-filed between September 1, 2018 – October 31, 2018, the agency assigned 50 (91%) for investigation within 14 days of filing. Dates assigned to investigators were not noted in the Chronology section of HEMS for the five remaining cases so the reviewer was unable to determine whether they were assigned within 14 days. See the Open FHAP Cases by Agency Report (9/01/2018 – 10/31/2018).

- A.5. The benchmark has not been met.** The agency was required to initiate all dual-filed investigations within 30 days of acceptance. However, the agency did not consistently initiate investigations within 30 days during the PIP. This benchmark was assessed as part of the FY 2018 Case Processing review

period (July 1, 2017 – June 30, 2018). The review by the previous GTM, Kia Johnson, revealed that a substantial number of investigations were not initiated within 30-days during the aforementioned period. Refer to the Completed/Reactivated FHAP Cases by Agency Report with FHAP Payment Notes provided with the 90-day status report and the payment notes reflected in HEMS for specifics.

- A.6. The benchmark has been met regarding the reporting aspect; however, the agency has a substantial aged case inventory.** The agency was required to report the number and age of active complaints in each investigator's inventory, excluding cases under legal review, for any jurisdictional complaints received after May 3, 2018. The agency provided the caseload information for each investigator. Below is the total active caseload for each investigator at the time of the onsite, inclusive of complaints filed prior to the PIP.

The recommended caseload per investigator is between 20-25. However, the agency investigators are carrying a substantially higher and unsustainable caseload and are required to close seven cases a month. This can be attributed, in part, to conversions resulting from the elimination of the substantial intake backlog and, more importantly, insufficient staffing levels compounded by the high turnover rate of the investigative staff. Thus, the agency now has a substantial aged case inventory as well. At the time of the onsite, the agency had a total of 198 open cases, of which 93 (47%) were aged. See the Open FHAP Cases over 300 Days Old report for specifics.

- Diana Diaz – 63
- Lisa Sutherland – 71
- Brendon Wikle - 62

The agency must significantly reduce or eliminate its aged case inventory. In order for the agency to effectively address the substantial aged case backlog, the agency leadership team must develop and implement strategies to assist the investigators with bringing them to conclusion. It should be noted that such large caseloads and monthly closure rates also negatively impacts the morale of the staff and the quality of the investigations.

- A.7. The benchmark has been met.** The agency was required to provide a copy of the protocol in effect between the housing unit and legal regarding the process for legal review of cases, including timeframes for completing reviews within 30 days. Though the agency did not meet the 30-day target, it provided the protocol within 60 days.
- A.8. The benchmark has been met.** The agency was required to provide names and status updates on all cases that were under review by legal during the PIP

with target completion dates. The agency provided the required information for impacted cases.

- A.9. The benchmark has been met.** The agency was required to report on the inventory of all complaints undergoing legal review. Though the agency did not meet the 30-day target, it provided the required information for impacted cases during the subsequent reporting periods.
- A.10. The benchmark has been met.** The agency was required to establish and submit a formal procedure that ensures the FCHR does not maintain an intake inventory of more than 10% of its open inquiries per quarter. Though the agency did not meet the 30-day target, it established and implemented procedures within 90 days. At the writing of this report, the agency has a total of 15 open inquiries ranging in age from 1 – 57 days old. See the Open FHAP Inquiries by Agency report for specifics.
- A.11. The benchmark has been met.** The agency was required to close or cause the nine critically aged cases between 300 – 679 days old identified at the beginning of the PIP within 60 days. Though the agency did not meet the 60-day target, it had closed or caused all nine cases by October 17, 2018.
- A.12. The benchmark has been met.** The agency was required to provide target completion dates for the 17 cases aged between 213 – 283 days old identified at the beginning of the PIP within 60 days. Target completion dates were provided for all 17 cases and all were closed during the PIP.
- B. Performance Standard #2: Administrative closures are utilized only in limited and appropriate circumstances. [24 CFR § 115.206(e)(2)].**
- B.1. The benchmark has not been met.** The agency was required to eliminate the complainant's failure to submit a Diary of Events as a justification for failing to proceed with investigative activities immediately. The agency indicated that they have eliminated this practice; however, based on the review conducted by the previous GTM as part of the FY 2018 case processing period, the investigators still relied on the failure of complainants to submit a diary of events as justification to close cases as failure to cooperate in several instances during the aforementioned period. Refer to the Completed/Reactivated FHAP Cases by Agency Report with FHAP Payment Notes provided with the status update on the 90-day benchmarks for specifics.
- B.2. The benchmark has not been met.** At the intake stage, the agency's intake analysts were required to appropriately assess jurisdiction in accordance with guidance contained in HUD's Title VIII Complaint Intake, Investigation, and Conciliation Handbook and obtained during intake training. If the case was determined to be non-jurisdictional, the case was to be closed within five days and HEMS was to be updated accordingly.

The onsite review found that the agency was not consistently assessing jurisdiction appropriately or uploading all relevant information in HEMS as required. Refer to related comments in A.2 above. The agency closed 18 inquiries as lack of jurisdiction during the PIP. The reviewer was only able to confirm that one (6%) was closed within five days. See the Completed/Reactivated FHAP Cases by Agency report for specifics.

- B.3. The benchmark has been met.** Upon assignment of a new case for investigation, FCHR investigators were required to reassess jurisdiction within 30 days. If the case was determined to be non-jurisdictional, it was to be closed within five days and HEMS updated accordingly. During the PIP, there was only one new case assigned that closed as lack of jurisdiction and it was done so within five days.
- B.4. The benchmark has not been met.** The agency was required to upload HUD's Case Closure Checklists signed by the Housing Manager in the documents section of HEMS for each case closed as lack of jurisdiction and failure to cooperate demonstrating that a supervisor reviewed the case prior to closure. During the PIP performance period, the agency closed 13 cases as failure to cooperate and four as lack of jurisdiction. Only four (31%) of the failure to cooperate closures had checklists executed by the Housing Manager uploaded to HEMS. The following four failure to cooperate checklists were executed by the Deputy Clerk instead of the Housing Manager. None of the lack of jurisdiction case closures had checklists uploaded. See the Completed/Reactivated FHAP Cases by Agency report for specifics.
- 04-18-1409-8 Lantzy, George vs. Pinewood Trailer Park, Inc.
 - 04-18-1113-8 Misuraca vs. University House of Gainesville, LLC
 - 04-18-1066-8 Grayson, Jabari v. Darden Property Management, Inc.
 - 04-18-3069-9 Gould, Richard v. Parkwood Mobile Home Park, LLC, et al

C. Performance Standard #5: The agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. [24 CFR § 115.206(e)(5)].

- C.1. The benchmark has been met.** The agency was required to demonstrate, via HEMS, all petitions for relief within its authority (i.e. actual, punitive damages) had been sought. During the PIP, a total 12 Petitions for Relief were returned by complainants and filed with the Department of Administrative Hearings (DOAH). All were uploaded to HEMS.
- C.2. The benchmark has been met.** The agency was required to update the post-cause activities captured on the FHAP Referral screen in HEMS on a monthly basis or as actions occurred for all cause cases. The agency caused five cases during the PIP and updated HEMS accordingly. During the performance

assessment, the agency also provided a list of 24 previously caused cases that are currently being handled by the Attorney General's Office. See attached report.

- C.3. The benchmark has been met.** The agency was required to avoid boilerplate public interest provisions and move provisions requiring the display of fair housing posters and notification of staff to the general provisions section of all conciliation agreements/settlements. The agency implemented the use of a revised Conciliation Agreement template that incorporated some of the more robust language that was provided to them as a sample from HUD on May 30, 2018. The revised template also relocated the provisions identified in the PIP to the general provisions section as required. The GTM will continue to monitor the agency's performance through the end of the case processing period for compliance.
- C.4. The benchmark has not been met.** The agency was required to ensure that public interest relief was not limited to training in cases where the facts suggest more robust relief was necessary to protect residents beyond the Complainant. The previous GTM noted several instances of the agency not obtaining any or appropriate/effective public interest relief as part of her review and reconciliation of case closures for the FY 2018 case processing period. Though the agency has implemented the use of a revised Conciliation Agreement, its investigators are still not engaging in effective conciliations. For example, the agency has developed a pattern of requiring the donation of \$100 or slightly more to a fair housing organization of the respondent's choice which is not meaningful and effective relief. See the case notes in HEMS. The investigators should take an advanced conciliation training to address this deficiency.
- C.5. The benchmark was not applicable during the PIP.** The agency was, where applicable, encouraged to evaluate a respondent's entire housing portfolio to assess whether widespread actions (i.e. multiple properties) were necessary.
- D. Performance Standard #9: The agency must conform its performance to the provisions of any written agreements executed by the agency and HUD related to substantial equivalence certification, including but not limited to the interim agreement or MOU. [24 CFR § 115.206(e)(9)].**
- D.1. The benchmark has not been met.** The agency was required to demonstrate that it had closed or charged 50% of all complaints received between April 1, 2018 – August 30, 2018 within 100 days by August 31, 2018. The agency indicated that they received 55 cases between April 1, 2018 – August 30, 2018 and closed 22 (40%). However, our records reflected that there was a total of 146 cases filed between the aforementioned dates, of which, 17 could have reached 100 days old on August 31, 2018. Of the 17, the agency closed or

charged a total of 10 (59%) , with only one of those 17 (6%) being closed within 100 days or less.

Case Number and Name		Origin (HUD or FHAP)	Initial Contact Date	Filing Date	Completion Disposition	Completion Date	Case Age
04-18-2604-8	Molina, Linda v. CHARLOTTE SQUARE CONDOMINIUM ASSOCIATION, INC.	FHAP	7/20/2017	05/21/18	Conciliation/ Settlement	9/10/2018	112
04-18-2465-8	Gratus Housing Advocates Inc. v. Senate Manor Estates	FHAP	6/30/2017	05/09/18	Conciliation/ Settlement	6/20/2018	42
04-18-2429-8	Mercer, Laurence v. Escondido Community Association, Inc., et al	HUD	4/3/2018	05/04/18	Conciliation/ Settlement	9/18/2018	137
04-18-2485-8	Seays, SaRissa v. Greystar Equity Partners I LLC et al	HUD	3/21/2018	05/10/18	No Cause	8/21/2018	103
04-18-2466-8	Moran, Jenry	FHAP	6/1/2017	05/09/18	Open		176
04-18-2267-8	Williams, Clifton & Chandra v. Bloomingdale Homeowners Association, Inc.	FHAP	7/21/2017	04/23/18	Open	6/28/2018	112
04-18-2333-8	Farabee, Thomas & Generalova, Yulia v Horizon Homes at Riverview, Inc.	FHAP	8/19/2017	04/26/18	No Cause	11/20/2018	208
04-18-2386-8	Surabian, Robert and Justine v Castel Del Mare Condominium Association, Inc., et al	FHAP	9/27/2017	05/01/18	Open		212
04-18-2405-8	Fitz and Theresa Dyer v. InterManagement LLC	FHAP	1/5/2018	05/02/18	Open		211
04-18-2451-8	Monteleone, Patricia v. Dolphin Way of Hickory Point Condominium Association, Inc.	HUD	2/21/2018	05/08/18	Conciliation	10/22/2018	148
04-18-2626-8	Guzman Rosado, Phillips v. Island Club West HOA, Inc., et al	HUD	5/1/2018	05/23/18	Open		190
04-18-2444-8	Alli, Akin and Onadjefe v. The Keyes Company, et al	HUD	3/15/2018	05/08/18	No Cause	10/18/2018	163
04-18-2424-8	Horowitz, Inbal v. Towers of Key Biscayne, et al.	HUD	3/19/2018	05/03/18	Open		210
04-18-2469-8	Revilla, Roger & Angela v. River Grand II Condominium Association, Inc., et al.	HUD	4/3/2018	05/09/18	Conciliation	10/15/2018	159
04-18-2564-8	Smith-Myers, Brenda and Myers, Stephen v. Blue Star Shoreview, LLC, et al	HUD	4/19/2018	05/17/18	No Cause	10/26/2018	141
04-18-2625-8	Goldschmid, Fred v. Fairview House Condo HOA, et al	HUD	4/19/2018	05/23/18	Open		190
04-18-2092-8	Arnold, Sandra vs Palm Tree Acres Subdivision Landowners Homeowner's Association, Inc.	FHAP	5/1/2017	04/10/18	Withdrawn after Resolution	8/3/2018	115

D.2. The benchmark has been met. The agency was required to demonstrate that it had closed or charged 95% of its aged complaints carried over from FY 2016 case processing period that were aged on July 1, 2017 by August 31, 2018. Our records confirm that the agency had a total of 78 aged cases open on July 1, 2017. All 78 (100%) were closed and/or caused by August 31, 2018. It is noted that the cause cases were sent to the Attorney General's Office and the majority of them are critically aged. The agency indicated in a PIP status report dated October 22, 2018, that it would be working closely with the Attorney General's Office to close those cases by October 30, 2018. The agency must provide a status update to HUD.

E. Budget and Finance Requirements [24 CFR § 115.307]:

E.1. The benchmark has not been met. The agency was required to return \$176,686 in unspent FHAP Administrative Cost (AC) funds to the United States Treasury. The agency was given the opportunity to provide a revised AC funds plan to utilize the unspent funds. However, after working with the agency's Operations Manager to that end, on October 22, 2018, we were informed that the agency could not pursue the opportunity. It was indicated that even though the agency could identify expenditures that were paid from general revenue in salaries and benefits that were in the initial FY 2017 AC funds plan (July 1, 2016 - June 30, 2017), the financial books were closed on the two fiscal years discussed and there could be no reallocation of expenditures; and, the identified expenditures could not be recoded from general revenue to the operating trust fund since the trust fund did not contain an appropriation category for full-time staff salaries and benefits effective July 1, 2016. As a result, the request for additional consideration would not be provided. The agency also proposed to repay the unspent AC funds from future case processing payments. However, this is not an allowable option.

During the onsite, it was indicated that the agency is preparing a budget request to be submitted to the Florida Governor's Office and legislature so that the agency can obtain refund authority. The agency is to provide HUD with an update on this request and a target date for the return of funds by May 31, 2019.

E.2. The benchmark has not been met as stated; however, the response provided by the agency is satisfactory. The agency, in partnership with the Florida State Legislature, was required to make every effort to address the current policy and permit the FCHR to use FHAP AC funds for salary and, additionally, not take any further actions that would limit or deny the use of FHAP funds beyond the purpose that HUD has provided. The agency indicated that it "cannot support the recurring payment of salaries and benefits from the Operating Trust Fund because the Operating Trust Fund does not have a consistent schedule of revenue receipts". For future plans, the agency will have to identify expenses allowable per 2 CFR 200 to use AC funds.

E.3. The benchmark has not been met; however, the response provided in a letter of June 12, 2018 is satisfactory. The agency was required to further segregate FHAP funds in an account separate from any other funds to prevent any future interpretation of comingling of funds. The agency indicated in the aforementioned letter, that it established designated spending codes that identify HUD spending in the Operating Trust fund and identifies spending of non-FHAP funds from the General Revenue fund. It was further indicated it would not be opening a separate account but would be using the existing accounting codes instead. In short, the agency believes the application of the codes is sufficient to address this finding. The GTM will monitor the agency's spending closely during the current performance period.

F. Data Support Systems [24 CFR § 115.307(a)(3)]:

F.1. The benchmark has not been met. The agency was required to provide more robust document descriptions and summaries in HEMS that accurately depict what the document is, and the specific information gleaned from that document to support the determination. The agency was further required to follow HUD's HEMS Data Entry Guidance Memo dated December 22, 2016. The previous GTM noted that specific cases were not in compliance with the HUD guidance as part of her review and reconciliation of case closures for the FY 2018 case processing period. It should also be noted that numerous instances of non-compliance were reflected throughout the FY 2018 case processing period prior to the issuance of the PIP. Further, the current GTM has noted inadequate document summaries in cases closed during the current case processing period. However, improvements were made by some investigators for cases closed near the end of the PIP. Refer to HEMS for specific case notes.

III. Civil Rights Requirements

1. The benchmark has been met. The agency was required to notify HUD of the current status of all civil rights complaints against the FCHR. The agency reported that all of the complaints had been resolved with a finding of no fault other than one has been filed in the Second Judicial Circuit in and for Leon County, Florida. The complaint alleges disability and sex discrimination and is ongoing.

IV. Conclusions:

Though the agency made progress towards improving its performance under the PIP, it has failed to meet all of the required benchmarks. As a result, and in accordance with 24 CFR 115.210, the agency is hereby suspended for a period of 90 days to allow it to cure the outstanding deficiencies identified above. The suspension will be effective March 11, 2019 – June 9, 2019. During the period of suspension, we will not refer complaints to the agency. However, we will provide the agency with the resources discussed during the

onsite as technical assistance under separate cover. Prior to the end of the suspension, we will conduct a subsequent performance assessment of the agency. If it is determined that the agency has not corrected the deficiencies and demonstrated that it meets all of the substantial equivalency certification criteria set forth in 24 CFR 115 at the end of the suspension, we will recommend the withdrawal of the agency's certification to the Assistant Secretary.

V. Exhibits

- A. FHAP Processed Inquiries 9/01/2018 – 10/31/2018
- B. Open FHAP Cases by Agency 9/01/2018 – 10/31/2018
- C. Open FHAP Cases over 300 Days Old
- D. Open FHAP Inquiries by Agency
- E. Completed/Reactivated FHAP Cases by Agency 6/01/2018 – 10/30/2018
- F. Completed/Reactivated FHAP Cases by Agency (Filed between 4/01/2018 - 8/31/2018)
- G. Cases to DOAH – June 1, 2018 – October 30, 2018
- H. Cases Sent to the Attorney General's Office - November 7, 2018 Update

VI. Signature Page

Aphrodite McCarthy

4/05/2019

Aphrodite McCarthy
GTM

Date

Vicki A. Ray

4/05/2019

Vicki A. Ray
FHIP/FHAP Branch Chief/GTR

Date

Carlos Osegueda

4/05/2019

Carlos Osegueda
FHEO Region IV Director/CAO

Date

United States Department of Housing and Urban Development

Office of Fair Housing and Equal Opportunity

Region IV

Post-Suspension Performance Assessment Report

FHAP Agency: Florida Commission on Human Relations

Address: 4075 Esplanade Way, Room 110, Tallahassee, Florida 32399-7020

Director: Michelle Wilson

Director's phone number: (850) 488-7082

Assessment Purpose: To determine whether the performance deficiencies of the Florida Commission on Human Relations that contributed to its 2019 suspension from the Fair Housing Assistance Program have been remedied and/or eliminated, and therefore whether the agency warrants continued certification as a participant in the program. This determination is based on the Florida Commission on Human Relations' compliance with the performance standards and requirements set forth in regulations implementing the Fair Housing Assistance Program, at 24 CFR part 115 and the Criteria for Processing, including concerns raised in the Suspension Letter and Post Performance Improvement Plan Performance Assessment Report issued on April 5, 2019.

Performance Period: April 11, 2019 – July 11, 2019

Date of Assessment: June 28 – July 16, 2019

On-Site Remote

HUD Reviewer: Aphrodite McCarthy, Government Technical Monitor
Vicki A. Ray, Government Technical Representative

Recommended for certification or recertification: Yes No

Table of Contents

	Page Number
I. Organizational Structure and Staffing	3-5
II. Performance Standards	5-14
A. Performance Standard #1	5-9
B. Performance Standard #2	9-10
C. Performance Standard #4	10
D. Performance Standard #5	11-12
I. Performance Standard #9	12
III. Budget and Finance Requirements	12-13
IV. Data Support Systems Requirement	13
V. Changes Limiting Effectiveness of Agency's Law	13-14
VI. Summary of Performance	14-16
VII. Conclusion and Recommendation	16
VIII. Exhibits	16
IX. Signature Page	17

Background: By letter dated May 23, 2018, HUD notified the Florida Commission on Human Relations (“the Commission”) of its placement on a Performance Improvement Plan (PIP) for an initial 90-day period effective June 1, 2018 – August 31, 2018. An additional 60-day extension was granted with a new ending date of October 31, 2018. On November 6 – 7, 2018, HUD conducted a follow-up performance assessment to determine whether the Commission met the required benchmarks to satisfy the PIP. The agency failed to meet all of the benchmarks. As a result, on April 5, 2019, the Commission was suspended for a 90-day period effective April 11, 2019 – July 11, 2019. This suspension was the direct result of the Commission’s failure to adequately address the following deficiencies in a manner that will lead to long-term success: (1) adequate staffing and workload management; (2) quality management and case processing; (3) conciliation and public interest requirements; and (4) budget and finance requirements.

In accordance with 24 CFR 115.210(b)(6), a performance assessment must be conducted prior to the end of the suspension. Between June 28, 2019 – July 16, 2019, HUD conducted a remote performance assessment to determine whether the performance deficiencies outlined in the April 5, 2019, Suspension Letter and Post-PIP Performance Assessment Report have been remedied and/or eliminated. In order to provide a comprehensive review, below is an assessment of the Commission’s performance during the suspension related to the specific performance standards and requirements benchmarks that were established during the PIP but not met, and additional observations related to its performance of the remaining performance standards and requirements, in general.

I. Organizational Structure and Staffing

A.2. The benchmark has not been met. Under the PIP, the Commission was required to hire new permanent investigative and intake staff. The recommended level of staff for the Commission is eight permanent investigators and four permanent intake analysts. However, the Commission failed to hire/maintain the appropriate staffing levels by the end of the PIP.

The following charts were provided to HUD by the Commission and purport to identify staff employed during the performance period who are responsible for enforcing and administering fair housing.

Name	Full-time Employees	Hire Date	% of Time Allocated to FHAP
Michelle Wilson	Executive Director	11/24/1997	50%
Casey Snipes	Executive Assistant I	10/29/2004	50%
Kellie Wilcox	Budget and Operations Manager	05/13/2019	50%
John Godwin	Operations Management Consultant (Budget and Program Support)	05/12/2005	50%
Alexis Steele	Fiscal Assistant I - OPS	02/01/2019	50%
Cheyenne Costilla	Chief Legal Counsel	05/19/2005	50%
Jacquelyn Dupree	Chief of Investigations	08/03/2018	50%

Regina Owens	Investigator Supervisor	05/21/2004	100%
Diana Diaz	Investigation Specialist II	07/08/2013	100%
Lisa Sutherland	Investigation Specialist II	06/24/2015	100%
Byron Pendergraft	Investigation Specialist I	11/02/2018	100%
Darlinda Williams-Stevens	Senior Clerk	11/02/2018	50%
Jeanie Williams	Senior Clerk	01/21/2011	50%
Maritza Donate	Regulatory Specialist	02/08/2019	100%
Darren Bonner	Senior Management Analyst	06/11/1999	50%
Pamela Coates-Smith	Office Automation Specialist I	07/23/2018	50%
Oscar Gonzalez	Systems Administrator OPS	06/15/2018	50%
Martin Hernandez	Network Systems Analyst	06/03/2013	50%
Robert Lange	Director of Information Systems	03/09/2018	50%
Alishia Merritt	Commission Deputy Clerk I	04/21/2008	50%
Francisco Penela	Dir of External & Legislative Affairs	02/13/2012	50%
Christopher Turner	Legislation Specialist	10/19/2018	50%
5 Vacant	Investigator Specialist I	Eff 07/01/2019	
3 Vacant	Regulatory Specialist I	Eff 07/01/2019	

Name	OPS Positions (Temporary)	Hire Date	% of Time Allocated to FHAP
Shalana Kilpatrick	Investigation Specialist I OPS	11/02/2018	100%
William Stutzman	Investigation Specialist I OPS	06/03/2019	100%
Darryl Foster	Investigation Specialist II OPS	06/03/2019	100%
Tinia Harris	Investigation Specialist II OPS	06/03/2019	100%
Malasia McDuffie	Investigation Specialist II OPS	06/03/2019	100%
Michelle Goodwine	Investigation Specialist II OPS	06/03/2019	100%
Kymerly Kemp	Investigation Specialist I OPS	11/02/2018	100%
Angelica Mikell	Regulatory Specialist I OPS	11/02/2018	100%
Macy Brown	Regulatory Specialist I OPS	11/02/2018	100%

The personnel chart above shows the Commission currently has ten investigators and three intake analysts. Of these staff members, twelve were hired between November 2018 and June 2019, and nine are temporary staff.

- Only three investigators are permanent full-time investigators, and one is a new employee hired in November 2018. The Commission hired an additional seven temporary investigators between November 2018 and June 2019.
- The Commission has one permanent intake analyst, hired in February 2019, and two temporary intake analysts hired in November 2018.

The Commission indicated that the 2019 Florida Legislature appropriated eight permanent positions, with the possibility that the Commission's temporary staff were eligible for conversion to permanent status. Despite this development, as of the date of the post-suspension review, the

Commission has not converted the temporary staff to permanent. Additionally, the new staff is insufficiently experienced to effectively aid the Commission with its workload. The Commission has not adequately addressed the critical need for consistent, permanent staffing at the Commission.

II. Performance Standards

A. Performance Standard #1: Commence complaint proceedings, carry forward such proceedings, complete investigations, issue determinations, and make final administrative dispositions in a timely manner. [24 C.F.R. § 115.206(e)(1)]

A.2. The benchmark has not been met. The Commission was required to assess any inquiries received during the suspension for jurisdiction and upload all relevant information into HEMS within 30 days of receipt of a signed complaint or legally acceptable substitute. During the suspension, HUD, as required by 24 CFR 115.210(b)(3), did not refer complaints to the Commission nor accept cases for dual filing. Thus, all inquiries processed by the Commission originated with the it and not with HUD, meaning the inquiry load was significantly reduced.

As of July 8, 2019, HEMS showed the Commission had seven open inquires as follows (Exhibit A). There was no evidence that any new inquiries were entered in HEMS.

Inquiry No.	Initial Date of Contact	Age of Inquiry
578418	3/11/2019	119
5778809	3/11/2019	119
581017	4/04/2019	95
581232	4/01/2019	98
581235	4/05/2019	94
581598	4/09/2019	90
581600	4/09/2019	90
No. processed w/in 30 days		0
Average Age		101 days

The Commission stated that it begins processing fair housing complaints within 30 days of receipt, but Exhibit A belies that assertion. According to the information in HEMS, the Commission did not meet the 30-day inquiry completion standard for inquiries open prior to the suspension. HEMS shows the Commission closed a total of six inquires during the three-month suspension period, but only one (17%) of the inquiries was closed within 30 days (Exhibit B). This is an unusually low number of inquiries for the Commission to receive over a three-month period. During the Commission's suspension period, HUD received approximately 195 inquiries within the Commission's jurisdiction. The Commission's high percentage of aged

inquiries, 83%, represents a significant increase in the Commission's total inquiry processing time from 2018 during the Performance Improvement Plan when it averaged around a 50% 30-day inquiry completion rate and processed far more inquiries.

Inquiry No.	Initial Date of Contact	Closure Date	Closure Reason	Age at Closure
580445	3/28/2019	5/29/2019	Dismissed for lack of jurisdiction	62
581593	4/09/2019	5/16/2019	Dismissed for lack of jurisdiction	37
580624	4/01/2019	5/16/2019	Complaint withdrawn by complainant without resolution	45
577986	3/04/2019	5/14/2019	Dismissed for lack of jurisdiction	71
572681	12/26/2018	5/01/2019	Complainant failed to cooperate	126
581236	4/05/2019	4/30/2019	Dismissed for lack of jurisdiction	25
No. processed w/in 30 days				1
Average Age				61

A.6. The benchmark has not been met. The Commission continues to have a substantial aged case inventory. The PIP required the Commission to report the number and age of active complaints in each investigator's inventory, excluding cases under legal review, for any jurisdictional complaints received after May 3, 2018. The purpose of the report was to confirm that the investigators were carrying a sustainable workload of 20-25 cases per person and were closing seven cases per month to decrease the Commission's aged inventory. While the Commission complied with the PIP requirement to provide a report of open cases, the post-suspension review found that the Commission continues to carry a substantial aged case inventory. During the PIP onsite review, 47% of the Commission's cases were aged. The Commission's aged inventory during the post-suspension review was even higher at 94%. Despite not receiving case investigation referrals from the Department during the suspension period, the Commission failed to make progress with reducing its aged inventory.

The Commission provided a list of open cases in each investigator's inventory as of June 27, 2019. None were reflected as being under legal review. A total of 177 cases were aged, out of which 71 were critically aged 300 days and older.

As of July 9, 2019, our records reflect the Commission had a total of 198 open cases. Of the open cases, 94%, or 186, were aged, out of which 37%, or 73, were critically aged 300 days and older (Exhibit C).

Age	Number	Percentage
0 – 100 days old	12	6%
101 – 299 days old	113	57%
300 days and older	73	37%
Total	198	100%
Average Case Age	250 days	

The recommended caseload per investigator is between 20-25. As of July 9, 2019, HEMS shows the following per investigator caseload which has been reduced significantly since the end of the PIP. However, it is noted that two investigators do not have any cases assigned.

Investigator	Position	Caseload	Experience with the agency
Shalana Kilpatrick	Investigation Specialist I OPS	14	8 months
Malasia McDuffie	Investigation Specialist I OPS	28	2 months
Diana Diaz	Investigation Specialist II	28	6 years
Darryl Foster	Investigation Specialist II OPS	26	2 months
Michelle Goodwine	Investigation Specialist II OPS	26	2 months
Tinia Harris	Investigation Specialist II OPS	27	2 months
Byron Pendergraft	Investigation Specialist I	13	8 months
William Stutzman	Investigation Specialist I OPS	0	2 months
Kymberly Kemp	Investigation Specialist I OPS	0	8 months
Lisa Sutherland	Investigation Specialist II	35	4 years
Unassigned		1	NA
Total number open cases		198	

During the suspension, the Commission closed or caused a total of 35 cases (Exhibit D). The Commission focused on resolving and closing aged cases during this period. Of those 35 cases, four were closed within 100 days. The average age of cases at closure was 240 days.

Age	Number	Percentage
0 – 100 days old	4	11%
101 – 299 days old	18	51%
300 days and older*	13	37%
Total	35	100%
Average Case Age	240 days	

**Note:* Three of the critically aged cases were caused during the suspension period, one of which also closed during that time.

Closure Type	Number	Percentage
Administrative Closures	8	23%
Withdrawn with Resolution	2	6%
Conciliation	6	17%
No Cause	17	49%
Cause	3*	9%
Total	35	100%

**Note:* A total of three cases were caused during the suspension period; however, one was ultimately closed as withdrawn with resolution. As a result, it was counted numerically under the appropriate closure type only to reflect the total of 35.

The three reasonable cause determinations issued during the suspension period were Percoskie v. Savanna Club, HUD #04-18-1687-8; Dabney v. Central Park HOA, HUD #04-18-1121-8; and Bowens, Reginald v. Tampa Bay Limited Partnership, et al, HUD #04-18-3847-8. A blank election of rights form was included with each Notice of Determination (Cause) issued by the Commission. The Commission indicated that if the form is not returned, a staff member reaches out to the complainant to determine the reason. Percoskie, Barbara v. Savanna Club HOA, Inc., HUD #04-18-1121-8, was withdrawn as a post-cause settlement. Relief included \$25,000 to complainant and the granting of the reasonable modification at issue. The complainant in one of the remaining cases elected for the Attorney General to bring a civil action on their behalf and the complainant in the final case has not yet responded with the election of rights form.

A preliminary report reflects the Commission closed or caused a total of 207 cases during the FY 2019 case processing period (Exhibit E). It should be noted that the exact case count will be confirmed once the reconciliation process has been completed and the GTM assessment of case quality will be reflected in the payment notes section in HEMS. Of the 207 cases, a total of 39 were closed within 100 days. The average age of cases at closure was 211 days.

Age	Number	Percentage
0 – 100 days old	39	19%
101 – 299 days old	122	59%
300 days and older*	46	22%
Total	207	100%
Average Case Age	211 days	

Closure Type	Number	Percentage
Administrative Closures	71	34%
Withdrawn with Resolution	16	8%
Conciliation	33	16%
No Cause	79	38%
Cause	10*	5%
FHAP Judicial Dismissal	1	.5%
Total	207	100%

**Note:* A total of 10 cases were caused during the case processing period; however, one was ultimately closed as withdrawn with resolution and two as post-case settlements. As a result, they were counted numerically under the appropriate closure type only to reflect the total of 207.

As part of this assessment but not related to deficiencies in the PIP or suspension, we evaluated the Commission's inclusion of final investigative reports in HEMS. Previously the Commission had not been preparing final investigative reports that contained a summary of the evidence gathered in the course of the investigation. A review of cases closed during the suspension shows the Commission has improved its document summaries so that the reports have improved considerably, though some entries in older open cases remain missing. Also, emails and other extraneous information still require editing.

B. Performance Standard #2: Administrative closures are utilized only in limited and appropriate circumstances. [24 CFR § 115.206(e)(2)].

B.1. The benchmark has not been met; numerous deficiencies were noted related to the processing of the cases that resulted in the outcome. The Commission was required to eliminate the complainant's failure to submit a Diary of Events as a justification for failing to proceed with investigative activities immediately. The Commission closed a total of 35 cases during the suspension period. There were eight administrative closures, which was 23% of the total closures. Seven of the administrative closures were withdrawals without resolution and one was a dismissal for lack of jurisdiction. None were closed as failure to cooperate.

However, during the FY 2019 case processing period, a total of 27 cases were closed as failure to cooperate. Although none of these closures were attributable to the complainants' failure to submit a Diary of Events, the current GTM identified numerous deficiencies related to the processing of the cases that resulted in the failure to cooperate disposition. Refer to the payment notes in HEMS for the specific deficiencies of each impacted case. Further, the Commission's overall administrative closure rate for the FY 2019 case processing period was unacceptably high at 38%. See the chart below.

Closure Type	Number	Percentage
Failure to Cooperate	27	38%
Lack of Jurisdiction	12	17%
Unable to Locate Complainant	1	1.4%
Unable to Locate Respondent	1	1.4%
Withdrawal without Resolution	30	42.2%
Totals	71	100%

B.2. The benchmark has not been met. At the intake stage, the Commission's intake analysts were required to appropriately assess jurisdiction in accordance with guidance contained in HUD's Title VIII Complaint Intake, Investigation, and Conciliation Handbook and obtained during intake training. If the case was

determined to be non-jurisdictional, the case was to be closed within five days and HEMS was to be updated accordingly. During the suspension, the Commission closed four inquiries as non-jurisdictional; none of which were closed within five days of determination.

Inquiry No.	Closure Date	Closure Reason	Age at Closure
580445	5/29/2019	Lack of jurisdiction	62
581593	5/16/2019	Lack of jurisdiction	37
577986	5/14/2019	Lack of jurisdiction	71
581236	4/30/2019	Lack of jurisdiction	25
Average Age			49

B.4. The benchmark has been met. The Commission was required to upload HUD's Case Closure Checklists signed by the Housing Manager in the documents section of HEMS for each case closed as lack of jurisdiction and failure to cooperate demonstrating that a supervisor reviewed the case prior to closure. During the suspension, the Commission closed one case as lack of jurisdiction. The executed checklist was uploaded as required. No cases were closed as failure to cooperate.

C. Performance Standard #4: The agency conducts compliance reviews for settlements, conciliation agreements, and orders resolving discriminatory housing practices. [24 CFR § 115.206(e)(4)]

The performance standard has not been met. The Commission has established a procedure for conciliation compliance reviews. The Housing Manager is responsible for conducting compliance reviews of all agreements. In the event a non-compliance is discovered, the Commission's General Counsel drafts a rescission of the previously issued dismissal for the Executive Director's consideration. Upon rescission of the dismissal, the case would be reopened for continued investigation of the allegations of discrimination.

As part of this assessment but not related to deficiencies in the PIP or suspension, the Commission submitted a copy of its Conciliation Compliance Spreadsheet which listed case numbers, parties, terms, date case closed, and notes as to compliance from July 1, 2018 through June 10, 2019. Of the 30 conciliations, there was no evidence that a compliance review was conducted for the following 12 agreements to determine full compliance of all terms by the respondents.

FCHR Case No.	HUD Case No.	Complainant
201916098	04-19-4425-8	Haggard, Toni
201918172	04-19-5704-8	Franklin, Bryanna
201915359	04-18-4125-8	Raheem Brown
2017H9400	04-18-1684-8	Fritchey, Tina & Jim
201914576	04-18-3509-8	Stoia, Kathleen
201802117	04-18-1046-8	Cherrell & Mark Small

201803191	04-18-1124-8	Wendy C. Baquedano-Munoz
201708222	04-17-1930-8	Barbara Jones
201708782/ 2017H0782	04-18-1159-8	Denise Mills
201709152/ 201709152	04-17-1117-8	Murielle Bingan
201709711	04-18-2604-8	Linda Molina
201912711	04-18-3072-8	Katherine Giesy

The following five were referred to the General Counsel for non-compliance.

FCHR Case No.	HUD Case No.	Complainant
201918207	04-19-5750-8	Schmidt, Jan
201803383	04-18-0675-8	Gratus Housing Advocates
201809234	04-18-2469-8	Angela Revilla
201709416/ 2017H0957	04-18-1118-8	Eimma Sachez & Armando Gomez
201810397	04-18-2451-8	Patricia Monteleone

Conclusion: The performance standard has not been met post-PIP and post-suspension.

- D. Performance Standard #5: The agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. [24 CFR § 115.206(e)(5)]**

The benchmark has not been met. (NOTE: This benchmark is found as I.C.4. in the *Post-PIP Performance Assessment Report*.) The Commission was required to ensure that public interest relief was not limited to training in cases where the facts suggest more robust relief was necessary to protect residents beyond the complainant.

The Commission was assigned a trained mediator to handle certain cases for conciliation at the outset to improve the conciliation rate and terms. The mediator did not share any information about the investigation with the parties and acted entirely neutral. Though some conciliation terms for the complainants have improved, the public interest provisions still remain weak and the Department is concerned that an impartial mediator who has no knowledge of the facts of the case will not seek adequate terms to protect the public interest. For example, in three of the six conciliated cases referenced at Performance Standard #3, where the application of rules in place was what led to the complaint, the public interest terms provided that respondent would review and revise its rules and policies and revise them if it deemed necessary. This may not be enough to protect the public interest. In another case with allegations of racial slurs, where the onsite investigation confirmed a pattern of alleged segregation by race of the residents, the public interest portion only provided for fair housing education and that the respondents maintain records during the period that the agreement remains in effect, described only as “from the effective date for so long as any of the rights or obligations described herein continues to exist.” This is not effective public interest relief based on the allegations or facts of the case. The Commission subsequently reported that it no longer uses the mediator and has resumed the investigator/conciliator roles.

As part of this assessment but not related to deficiencies in the PIP or suspension, the Commission reported that only one case proceeded to an administrative hearing during the performance period. In *Townsend v. Malaty* (HUD #04-18-0442-8), a mixed findings case, a hearing was held on June 13, 2019. However, an order has not yet been issued so there has not yet been a final resolution. In cases that have not yet advanced to an administrative hearing or civil action, the Commission states that it attempts to collect information from the complainant to determine that individual's actual, out of pocket losses resulting from the alleged discrimination. That information is then used during conciliation discussions. Please see Performance Standard #3 for a summary of the relief obtained in the five cases conciliated during the suspension.

The Commission further reported that the complainant in *Green v. Sun Lake Multifamily Holdings* (HUD #04-18-1927-8) filed a Petition for Relief following the no reasonable cause determination. An administrative hearing was held through the State of Florida Division of Administrative Hearings and an order was issued on May 21, 2019 which indicated that the Petitioners failed to meet the burden to establish discrimination and recommended case dismissal.

E. Performance Standard #9: The agency must conform its performance to the provisions of any written agreements executed by the agency and HUD related to substantial equivalence certification, including but not limited to the interim agreement or MOU. [24 CFR § 115.206(e)(9)]

The benchmark has not been met. (NOTE: This benchmark is found as I.D.1. in the *PIP Performance Assessment Report*.) The Commission was required to demonstrate that it had closed or charged 50% of all complaints received between April 1, 2018 – August 30, 2018 within 100 days by August 31, 2018.

No cases were dual filed during the suspension period. However, the Commission closed a total of 35 cases during that time, of which only four (11%) were 100 days old or less. The Commission continues to struggle with closing cases timely.

III. Budget and Finance Requirements [24 CFR § 115.307]

The benchmark has been met regarding the return of funds; however, additional deficiencies have been noted. The Commission was required to return \$176,686 in unspent FHAP Administrative Cost (AC) funds to the United States Treasury. The Commission was given the opportunity to provide a revised AC funds plan to utilize the unspent funds. This was not possible, and the Commission ultimately was able to secure refund authority. The Commission has now successfully returned those funds.

As part of this assessment but not related to deficiencies in the PIP or suspension, the Commission reported that it had provided certifications to HUD confirming that it spends at least 20% of its total operating budget (not including FHAP funds) on fair housing activities; however, no such certifications were submitted with its response.

The Commission has reported that it has established designated spending codes that identify HUD spending in the Operating Trust Fund and identifies spending of non-FHAP funds from the General Revenue fund and that it used funds for the purpose of HUD activities. During the suspension period, the Commission submitted a training plan and AC funds plan that were approved in order to spend outstanding FY 2018 training funds and AC funds.

The Commission further reports that it has increased the level of financial resources of non-FHAP funds by 14%; however, no evidence was provided to support the assertion. The Commission was not audited during the suspension period. The Commission reports that it maintains records demonstrating its financial administration of FHAP funds.

IV. Data Support Systems Requirement [24 CFR § 115.307(a)(3)]

The benchmark has not been met. (*NOTE: This benchmark is found as II.F.1. in the Post-PIP Performance Assessment Report.*) The Commission was required to provide more robust document descriptions and summaries in HEMS that accurately depict what the document is, and the specific information gleaned from that document to support the determination. The Commission was further required to follow HUD's HEMS Data Entry Guidance Memo dated December 22, 2016.

The Commission uses the Department's official complaint data information system (HEMS); however, the current GTM has noted inadequate document summaries in cases closed during the current case processing period. Improvements are being made for cases closed. In its response for this report, the Commission cites two cause cases, as follows, as examples of cases where the evidence in the case has been properly summarized and uploaded. A review of HUD #04-18-1121-8 showed that document summaries are still not being done properly. For example, the 75 page long "Diary of Events" is "summarized" as simply "Diary of Events."

V. Changes Limiting Effectiveness of Commission's Law: [24 CFR § 115.211]

The Commission has continuing substantial equivalency issues that have yet to be corrected but were not included in the PIP or suspension. The Commission reports that there were no changes to the Florida law during the suspension period. The Commission recognized that although current Florida law regarding substantial equivalency conforms to the provisions of all written agreements with HUD, some courts continue to interpret this differently. For the last six years, FCHR legislation has been filed to address this interpretation issue and as yet, has not passed both houses of the legislature. The Commission states that it continues to file legislation that clarifies/codifies this discrepancy.

VI. Summary of Performance

1. Organizational Structure and Staffing

Finding: Under the PIP, the agency was required to hire new permanent investigative and intake staff. The recommended level of staff for FCHR is eight permanent investigators and four permanent intake analysts. At the end of the suspension period, the agency had 10 fair housing investigators and three intake analysts. Of these staff members, twelve were hired between November 2018 and June 2019, and nine are temporary staff. The Commission indicated that the 2019 Florida Legislature appropriated eight permanent positions, with the possibility that the Commission's temporary staff were eligible for conversion to permanent status. Despite this development, as of the date of the post-suspension review, the Commission has not converted the temporary staff to permanent. Additionally, the new staff is insufficiently experienced to effectively aid the Commission with its workload. The Commission has not adequately addressed the critical need for consistent, permanent staffing at the Commission.

2. Performance Standard #1: Commence complaint proceedings, carry forward such proceedings, complete investigations, issue determinations, and make final administrative dispositions in a timely manner. [24 C.F.R. § 115.206(e)(1)]

- a. **Finding:** The agency was required to assess any inquiries received during the suspension for jurisdiction and upload all relevant information into HEMS within 30 days of receipt of a signed complaint or legally acceptable substitute. HEMS shows the agency closed a total of six inquiries during the three-month suspension period, with only one (17%) of those closed within 30 days. This is an unusually low number of inquiries for the Commission to receive over a three-month period. During the Commission's suspension period, HUD received approximately 195 inquiries within the Commission's jurisdiction. The Commission's high percentage of aged inquiries, 83%, is unacceptable.
- b. **Finding:** The PIP required the agency to report the number and age of active complaints in each investigator's inventory, excluding cases under legal review, for any jurisdictional complaints received after May 3, 2018. While the Commission complied with the requirement to provide a list of open cases in each investigator's inventory, the Commission continues to carry a substantial aged case inventory. During the PIP onsite review, 47% of the Commission's cases were aged. The Commission's aged inventory during the post-suspension review was even higher at 94%. Despite not receiving case investigation referrals from the Department during the suspension period, the Commission failed to make progress with reducing its aged inventory.

3. Performance Standard #2: Administrative closures are utilized only in limited and appropriate circumstances. [24 CFR § 115.206(e)(2)].

- a. **Finding:** The agency was required to eliminate the complainant's failure to submit a Diary of Events as a justification for failing to proceed with investigative activities immediately. The Commission eliminated the diary of events as a justification for administrative closures; however, the Commission's overall administrative closure rate is unacceptably high at 38%. In contrast, HUD's nationwide FY19 administrative closure rate as of August 7, 2019 is 14.7%, and in Region IV, the rate is 11.4%.
- b. **Finding:** At the intake stage, the agency's intake analysts were required to appropriately assess jurisdiction in accordance with guidance contained in HUD's Title VIII Complaint Intake, Investigation, and Conciliation Handbook and obtained during intake training. If the case was determined to be non-jurisdictional, the case was to be closed within five days and HEMS was to be updated accordingly. During the suspension, the Commission closed four inquires as non-jurisdictional; none of which were closed within five days of determination.

4. Performance Standard #4: The agency conducts compliance reviews for settlements, conciliation agreements, and orders resolving discriminatory housing practices. [24 CFR § 115.206(e)(4)]

Finding: The Commission complied with this performance standard prior to the PIP; therefore, no deficiencies were noted at its issuance. However, the performance standard has not been met post-PIP and post-suspension.

The Commission submitted a copy of its Conciliation Compliance Spreadsheet which listed case numbers, parties, terms, date case closed, and notes as to compliance from July 1, 2018 through June 10, 2019. Of the 30 conciliations, there was no evidence that a compliance review was conducted for 40%, or 12 agreements, to evaluate respondents' full compliance with all terms.

5. Performance Standard #5: The agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. [24 CFR § 115.206(e)(5)]

Finding: The agency was required to ensure that public interest relief was not limited to training in cases where the facts suggest more robust relief was necessary to protect residents beyond the Complainant. The public interest provisions in the Commission's conciliation agreement remain weak.

6. Performance Standard #9: The agency must conform its performance to the provisions of any written agreements executed by the agency and HUD related to substantial equivalence certification, including but not limited to the interim agreement or MOU. [24 CFR § 115.206(e)(9)]

Finding: The agency was required to demonstrate that it had closed or charged 50% of all complaints received between April 1, 2018 – August 30, 2018 within 100 days by August 31, 2018. No cases were dual filed during the suspension period. However, the Commission closed a total of 35 cases during that time, of which 88.5%, or 31 cases, were over 100 days old. The Commission continues to struggle with timely case closures.

7. Budget and Finance Requirements [24 CFR § 115.307]

Finding: The Commission successfully returned the outstanding Administrative Cost (AC) funds in the amount of \$176,686 to the Treasury. However, as part of this assessment but not related to deficiencies in the PIP or suspension, the Commission reported that it had provided certifications to HUD confirming that it spends at least 20% of its total operating budget (not including FHAP funds) on fair housing activities; however, no such certifications were submitted with its response. Additionally, the Commission further reported that it has increased the level of financial resources of non-FHAP funds by 14%; however, no evidence was provided to support the assertion.

8. Data Support Systems Requirement [24 CFR § 115.307(a)(3)]

Finding: The Commission was required to provide more robust document descriptions and summaries in HEMS that accurately depict what the document is, and the specific information gleaned from that document to support the determination. The Commission was further required to follow HUD's HEMS Data Entry Guidance Memo dated December 22, 2016. Though some improvements have been made, the current GTM has noted inadequate document summaries in cases closed during the current case processing period.

VII. Conclusion and Recommendation

The Commission met a few administrative requirements, but critical performance standards and benchmarks were not met. The Commission's performance does not merit its continued participation in the Fair Housing Assistance Program. As a result, we recommend the withdrawal of the Commission's certification to the Assistant Secretary.

VIII. Exhibits

- A. Open FHAP Inquiries Report
- B. Closed Inquiry Report during Suspension
- C. Open FHAP Cases as of 7/09/2019
- D. FHAP Closed or Caused Cases during Suspension
- E. Completed FHAP Cases during FY 2019 Case Processing Period

IX. Signature Page

Florida Commission on Human Relations
Performance Assessment Report

Aphrodite McCarthy

Aphrodite McCarthy
FHEO Government Technical Monitor

7/16/19

Date

Vicki A. Ray

Vicki A. Ray
FHEO, Government Technical Representative

7/25/2019

Date

Carlos Osegueda

Carlos Osegueda
FHEO Region IV Director

08/08/2019

Date



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

SEP 25 2019

Michelle Wilson, Executive Director
Florida Commission on Human Relations
4075 Esplanade Way Room 110
Tallahassee, FL 32399-7020

Dear Ms. Wilson:

This letter concerns the recommendation that I withdraw the certification of the Florida Commission on Human Relations (FCHR or the Commission) as a participant in the Fair Housing Assistance Program (FHAP). I have reviewed FCHR's performance¹, the 2019 *Post-Suspension Performance Assessment Report* prepared by FHEO's Region IV Office, and your August 27, 2019, response to the report. For the reasons more fully explained below, I have decided not to withdraw FCHR's certification at this time. The FCHR will continue in the FHAP for one year in a probationary status. Within 30 days of the end of the one-year probationary period FCHR's performance will be re-assessed by FHEO's Region IV Office and a decision will then be made as to the Commission's continued participation in the FHAP.

Staffing and Workload Management

While HUD's *Post-Suspension Performance Assessment Report* and your letter of August 27, 2019, are not in agreement on the degree of success of the Commission's recent hiring efforts, it is possible to view the underperformance of FCHR for the last several years as the result of inadequate staffing, especially in investigative and intake positions. Based on the representations made to me by FCHR representatives in Orlando, and the assertions in your letter of August 27, 2019, the Commission has converted and/or hired, or is in the final stages of converting and/or hiring, eight permanent fair housing investigators and four permanent intake analysts.

FCHR has thus assured the Department that it is completing hiring actions to meet the full-time staffing levels recommended by FHEO's Region IV Office. While obtaining these positions is a positive development, training and retaining this new staff will be of paramount importance to perform at an acceptable level and emerge successfully from the probationary period.

Other Matters

In reaching my decision not to withdraw the FCHR from the FHAP at this time, I am nonetheless aware of several significant case processing deficiencies noted in the *Post-Suspension Performance Assessment Report*, specifically: timeliness of case processing; over-reliance on

¹ In May 2018 HUD placed FCHR on a Performance Improvement Plan (PIP) for an initial 90-day period; a 60-day extension was granted. In November 2018 HUD determined that FCHR had failed to meet all of the PIP benchmarks. On April 5, 2019, HUD suspended the Commission for a 90-day period effective April 11, 2019 through July 11, 2019.

administrative closures; failure to monitor compliance with conciliation agreements; and failure to consistently pursue adequate public interest relief. It is my hope that FCHR's promised resolution of its staffing issues will lead to substantial improvement in these areas. In addition to the performance assessment criteria set forth in the FHAP regulations, the re-assessment of the Commission's performance at the end of the probationary period will include a focus on these areas.

While on probation, the Commission will continue to be exempt from the Region IV Intake Initiative. Staff from the Region IV Office will continue to provide support and technical assistance to the agency as necessary.

The Department values its relationship with the Florida Commission on Human Relations. I am hopeful that during the probationary period the Commission can demonstrate its ability to serve the citizens of Florida and to meet its contractual obligations with HUD.

Sincerely,



Anna María Fajás
Assistant Secretary for Fair Housing
and Equal Opportunity

cc: Carlos Osegueda

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 726

INTRODUCER: Senator Rouson

SUBJECT: Florida Commission on Human Relations

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SB 726 amends several statutes related to the functioning of the Florida Commission on Human Relations (Commission). The Commission is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

Specifically, the bill:

- Changes the number of Commissioners required for a quorum from seven to a majority of the currently appointed commissioners and establishes a quorum of three for panels.
- Allows the Commission to nominate fewer than 10 people for the Florida Civil Rights Hall of Fame each year.
- Requires the Commission to provide notice to an aggrieved person of their failure to determine reasonable cause if the Commission fails to make a determination within one year of the complaint's filing.
- Removes the requirement that facilities and communities designed for the housing of elderly must register with the Commission and renew such registration every two years, and removes associated fees and fines.
- Removes the requirement that the Commission or Attorney General investigate public housing discrimination complaints, and increases the time period the Attorney General has to resolve a complaint regarding discriminatory practices of certain clubs from 30 to 45 days.
- Revises various deadlines and time constraints regarding the Commission's fact-finding investigation period for a retaliation claim.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, and marital or familial status. The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services. The Commission possesses the requisite powers to enforce the FCRA.¹ The Governor appoints, and the Senate confirms, the 12 members of the Commission.²

The Florida Commission on Human Relations

The Commission, created by s. 760.03, F.S., is empowered to receive, initiate, investigate, conciliate, and act upon complaints alleging discriminatory practices.³ Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.⁴

Administrative and Civil Remedies

An aggrieved person, the Commission, a commissioner, or the Attorney General has 365 days after the alleged violation to file a complaint with the Commission naming the person responsible for the violation and describing the violation.⁵ Within 180 days of the filing, the Commission must make a determination of whether reasonable cause exists to believe that discriminatory practice has occurred.⁶

If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring civil action.⁷ A civil action must be brought within a year of the determination of reasonable cause.⁸ The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.⁹ The remedies available through an administrative hearing are affirmative relief from the effects of the practice, including back pay, and attorney's fees, while remedies available through a civil action include affirmative relief such as back pay, injunctive relief, compensatory damages, punitive damages up to \$100,000, and attorney's fees.¹⁰

On the other hand, under section 760.11(7), F.S., if the Commission makes a determination that there is not reasonable cause, the claimant may request an administrative hearing, but must do so

¹ Section 760.06(6), F.S.

² Section 760.03(1), F.S.

³ Section 760.06(5), F.S.

⁴ Section 760.021(1), F.S.

⁵ Section 760.11(1), F.S.

⁶ Section 760.11(3), F.S.

⁷ Section 760.11(4), F.S.

⁸ Section 760.11(5), F.S. If, however, the commission fails to make a determination of reasonable cause, the four-year statute of limitations for cause of action based on statutory liability applies. *Joshua v. City of Gainesville*, 768 So.2d 432 at 439 (Fla. 2000).

⁹ Section 760.07, F.S.

¹⁰ Section 760.11(5), (6), and (7), F.S.

within 35 days of the date of the “no cause” determination. If the claim is not made within 35 days, the claim is barred.¹¹

Commission Administration

Section 760.03(1), F.S., requires the Commission be comprised of 12 members. Currently, the Commission has just 8 members appointed to serve on its board.¹²

Current law provides that seven members constitute a quorum for the Commission to conduct business.¹³ Due to the low number of commissioners currently appointed, the Commission has difficulty meeting the seven member quorum. If two members were to resign, the Commission could no longer conduct official business at all. Other commissions and government entities may satisfy their quorum requirements with a majority of their currently appointed members.¹⁴

The Commission is also permitted to establish panels of not less than three members to exercise its powers under the Florida Civil Rights Act, subject to procedures and limitations the Commission may provide by rule.¹⁵

Halls of Fame in Florida

It is the intent of the Florida Legislature to recognize and honor those persons, living or dead, who have made significant contributions to this state. The Legislature has established various Halls of Fame including the Florida Women’s Hall of fame, Florida Artists Hall of Fame, Florida Educator Hall of Fame, Florida Sports Hall of Fame, and the Florida Civil Rights Hall of Fame.

The Florida Commission on Human Relations Hall of Fame was created by the state legislature in 2010.¹⁶ Each year the Commission recommends 10 people for induction into the Florida Civil Rights Hall of Fame, from which list the Governor selects up to 3 new members.¹⁷ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made significant contribution and provided exemplary leadership toward Florida’s progress and achievements in civil rights.¹⁸

¹¹ Section 760.11(7), F.S.

¹² *Commissioners*, Florida Commission on Human Relations, <https://fchr.myflorida.com/fchrcommissioners> (last accessed December 3, 2020).

¹³ Section 760.03(5), F.S.

¹⁴ *See, e.g.* ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans’ Hall of Fame), and 456.011(3) (Boards and Commissions within DOH).

¹⁵ Section 760.03(5), F.S.

¹⁶ *See* ch. 2010-53, Laws of Fla.

¹⁷ Section 760.065(3)(a), F.S.

¹⁸ Section 760.065(3)(b), F.S.

The Commission has failed to receive the minimum 10 recommendations several times. In 2014, 2015, and 2016, the Commission faced violating the statute by submitting fewer than 10 recommendations.¹⁹ In each year the Governor has selected the maximum three inductees.

Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act, which protects citizens against discrimination in housing practices.²⁰ The Florida Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice may file a complaint with the Commission.²¹ The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.²² The Commission has 100 days after receipt of the complaint to complete its investigation and give notice in writing to the person aggrieved whether it intends to resolve it.²³ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²⁴

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply. Certain housing for older persons is exempt from charges of discrimination based on familial status.²⁵ Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older. These facilities must register with the Commission and renew such registration every two years, and pay a \$20 fee for registration and renewal.²⁶ The Commission may impose an administrative fine of up to \$500 for submission of false information,²⁷ but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015.²⁸ The registry is not determinative as to whether the community actually qualifies from the housing for older persons' exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

¹⁹ The Commission submitted six nominations in 2014, and nine nominations both in 2015 and 2016.

²⁰ Sections 760.20-760.37, F.S.

²¹ Section 760.34(1), F.S.

²² Section 760.34(2), F.S.

²³ Section 760.34(1), F.S.

²⁴ *Id.*

²⁵ Section 760.29(4), F.S.

²⁶ Section 760.29(4)(c), F.S.

²⁷ *Id.*

²⁸ See *How to Register for Housing for Older Persons* fchr.myflorida.com/fchr55andolderhousing/, last accessed December 4, 2019.

Whistleblower Investigations

The Commission is authorized to investigate any allegation of an adverse action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.²⁹ When an employer retaliates against an employee who makes such a disclosure (a whistleblower), the whistleblower may make a complaint to either the Inspector General or the Commission within 60 days.³⁰ The office must provide notice of receipt of such a complaint, and the Commission will begin a fact finding investigation into the complaint.³¹ The Commission must investigate the complaint and, if a violation is found, move to protect the whistleblower by petitioning for relief and recommending disciplinary proceedings as they see fit.³²

If an agency does not implement the recommended action of the Commission in 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.³³ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.³⁴

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and state the reasons for terminating the investigation.³⁵

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.³⁶ This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from non-members for business purposes.³⁷ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital

²⁹ See s. 112.3187(4), (5), (6), and (7).

³⁰ Section 112.31895(1), F.S.

³¹ Section 112.31895(2), F.S.

³² Section 112.31895(3), F.S.

³³ Section 112.31895(3)(e), F.S.

³⁴ Section. 112.31895(4)(a), F.S.

³⁵ Section 112.31895(3)(d), F.S.

³⁶ Section 760.60(1), F.S.

³⁷ *Id.*

status.³⁸ This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.³⁹

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.⁴⁰ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant in writing if it intends to resolve the complaint.⁴¹

If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁴² If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.⁴³ If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁴⁴

III. Effect of Proposed Changes:

Florida Commission on Human Relations

Section 1 amends s. 760.03, F.S., to change the number of commissioners required for a quorum from seven to a majority of the currently appointed commissioners. This change should avoid a situation where action needs to be taken but, due to unfilled commissioner slots, having seven commissioners is impracticable. For example, the section allows the Commission, as it sits today with only nine commissioners, to meet and conduct business with a quorum of five members. The section also establishes a quorum of three members for panels.

Section 2 amends s. 760.065, F.S., to allow the Commission to nominate fewer than 10 people for the Florida Civil Rights Hall of Fame each year. Currently, the Commission must nominate exactly 10 people each year, while the Governor may accept between zero and three new members. This prevents the Commission from violating the law when they receive fewer than 10 nominations from which to select.

Section 3 amends s. 760.11, F.S., to require the Commission to notify an aggrieved person of the failure to conciliate or determine reasonable cause if the Commission fails to make a

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 760.60(2), F.S.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Section 760.60(3), F.S.

⁴⁴ *Id.*

determination within 180 days of the complaint's filing. It further requires that this notice include a statement of the aggrieved person's rights.

The section requires any civil action be commenced within one year following the Commission's notice of dismissal being mailed.

Florida Fair Housing Act

Section 4 deletes s. 760.29(4)(e), F.S., to remove the requirement that facilities and communities designed for the housing of elderly must register with the Commission and renew such registration every two years, including associated fees and fines.

Section 5 amends s. 760.31, F.S., to remove instructions for fee and forms made obsolete by Section 4 of the bill.

Discriminatory Practices in Certain Clubs

Section 6 amends s. 760.60, F.S., to delete the requirement that the Commission or the Attorney General investigate the public accommodation discrimination complaint. The section also extends from 30 days to 45 days the time for the Commission or the Attorney General to resolve the dispute.

State Employee Whistle-Blower's Act

Section 7 amends s. 112.31895, F.S., to alter various deadlines and time constraints regarding the Commission's fact-finding investigation period for a whistleblower retaliation claim. Specifically, Section 7:

- Increases the time period allowed to acknowledge receipt of a complaint from 3 to 5 working days;
- Removes the requirement that the Commission separately acknowledge receipt of a complaint;
- Increases the time period allowed for the Commission to complete its fact-finding report from 90 to 180 days;
- Decreases the time period allowed for the Commission to terminate its investigation from 60 to 35 days after receipt of the fact-finding report if the Commission is unable to conciliate a complaint;
- Increases the time period allowed for the relevant agency to implement the Commission's recommended action from 20 to 35 days; and
- Decreases the time period allowed for a complainant to appeal following a notice of termination of the investigation from 60 to 21 days.

These changes bring most of the timeframes for s. 112.31895, F.S., (whistleblower) complaint investigations in line with complaints filed with the Commission under s. 760.11, F.S. (discrimination complaints)

The bill takes effect July 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce 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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

Elderly housing organizations will no longer have to register every two years, which may have an indeterminate positive impact.

C. Government Sector Impact:

The Commission will have a longer period of time to investigate whistleblower allegations, which will allow it more freedom in organizing its efforts. The Commission will no longer have to register elderly housing organizations. Both changes may have an indeterminate impact on workload of the Commission but is not expected to impact overall revenues or expenditures of the Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.03, 760.065, 760.11, 760.29, 760.31, 760.60, and 112.31895.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Rouson

19-01053-20

2020726__

1 A bill to be entitled
 2 An act relating to the Florida Commission on Human
 3 Relations; amending s. 760.03, F.S.; revising quorum
 4 requirements for the Commission on Human Relations and
 5 its panels; amending s. 760.065, F.S.; revising the
 6 number of persons the commission must recommend for
 7 the Florida Civil Rights Hall of Fame; amending s.
 8 760.11, F.S.; requiring the commission to provide
 9 notice to an aggrieved person under specified
 10 circumstances; providing notice requirements; limiting
 11 the time the aggrieved person has to commence a civil
 12 action regarding a violation of the Florida Civil
 13 Rights Act; amending s. 760.29, F.S.; deleting a
 14 requirement that a facility or community that provides
 15 housing for older persons register with and submit a
 16 letter to the commission; amending s. 760.31, F.S.;
 17 conforming a provision to changes made by the act;
 18 amending s. 760.60, F.S.; deleting the requirement for
 19 the commission or Attorney General to investigate a
 20 complaint of discrimination in evaluating an
 21 application for club membership; revising the length
 22 of time the commission or Attorney General has to
 23 resolve such a complaint; amending s. 112.31895, F.S.;
 24 revising the timeline relating to a complaint alleging
 25 a prohibited personnel action; deleting a requirement
 26 that the commission notify a complainant upon receipt
 27 of the complaint; providing an effective date.
 28
 29 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 11

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

19-01053-20

2020726__

30
 31 Section 1. Subsection (5) of section 760.03, Florida
 32 Statutes, is amended to read:
 33 760.03 Commission on Human Relations; staff.-
 34 (5) A quorum is necessary for the conduct of official
 35 business. Unless otherwise provided by law, a quorum consists of
 36 a majority of the currently appointed commissioners. ~~Seven~~
 37 ~~members shall constitute a quorum for the conduct of business;~~
 38 ~~however,~~ The commission may establish panels of not less than
 39 three of its members to exercise its powers under the Florida
 40 Civil Rights Act of 1992, subject to such procedures and
 41 limitations as the commission may provide by rule.
 42 Notwithstanding this subsection, three appointed members serving
 43 on panels shall constitute a quorum for the conduct of official
 44 business of the panel.
 45 Section 2. Paragraph (a) of subsection (3) of section
 46 760.065, Florida Statutes, is amended to read:
 47 760.065 Florida Civil Rights Hall of Fame.-
 48 (3) (a) The commission shall annually accept nominations for
 49 persons to be recommended as members of the Florida Civil Rights
 50 Hall of Fame. The commission shall recommend up to 10 persons
 51 from which the Governor shall select up to 3 hall-of-fame
 52 members.
 53 Section 3. Subsection (8) of section 760.11, Florida
 54 Statutes, is amended to read:
 55 760.11 Administrative and civil remedies; construction.-
 56 (8) If ~~in the event that~~ the commission fails to conciliate
 57 or determine whether there is reasonable cause on any complaint
 58 under this section within 180 days of the filing of the

Page 2 of 11

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

19-01053-20

2020726__

59 complaint;7

60 (a) An aggrieved person may proceed under subsection (4)7
61 as if the commission determined that there was reasonable cause.

62 (b) The commission shall promptly notify the aggrieved
63 person of the failure to conciliate or determine whether there
64 is reasonable cause. The notice shall provide the options
65 available to the aggrieved person under subsection (4) and
66 inform the aggrieved person that a civil action is prohibited if
67 not filed within 1 year after the date the commission certifies
68 that the notice was mailed.

69 (c) Any civil action brought by an aggrieved person under
70 this section must be commenced within 1 year after the date the
71 commission certifies that the notice was mailed pursuant to
72 paragraph (b).

73 Section 4. Subsection (4) of section 760.29, Florida
74 Statutes, is amended to read:

75 760.29 Exemptions.—

76 (4) (a) Any provision of ss. 760.20-760.37 regarding
77 familial status does not apply with respect to housing for older
78 persons.

79 (b) As used in this subsection, the term "housing for older
80 persons" means housing:

81 1. Provided under any state or federal program that the
82 commission determines is specifically designed and operated to
83 assist elderly persons, as defined in the state or federal
84 program;

85 2. Intended for, and solely occupied by, persons 62 years
86 of age or older; or

87 3. Intended and operated for occupancy by persons 55 years

19-01053-20

2020726__

88 of age or older that meets the following requirements:

89 a. At least 80 percent of the occupied units are occupied
90 by at least one person 55 years of age or older.

91 b. The housing facility or community publishes and adheres
92 to policies and procedures that demonstrate the intent required
93 under this subparagraph. If the housing facility or community
94 meets the requirements of sub-subparagraphs a. and c. and the
95 recorded governing documents provide for an adult, senior, or
96 retirement housing facility or community and the governing
97 documents lack an amendatory procedure, prohibit amendments, or
98 restrict amendments until a specified future date, then that
99 housing facility or community shall be deemed housing for older
100 persons intended and operated for occupancy by persons 55 years
101 of age or older. If those documents further provide a
102 prohibition against residents 16 years of age or younger, that
103 provision shall be construed, for purposes of the Fair Housing
104 Act, to only apply to residents 18 years of age or younger, in
105 order to conform with federal law requirements. Governing
106 documents which can be amended at a future date must be amended
107 and properly recorded within 1 year after that date to reflect
108 the requirements for consideration as housing for older persons,
109 if that housing facility or community intends to continue as
110 housing for older persons.

111 c. The housing facility or community complies with rules
112 made by the Secretary of the United States Department of Housing
113 and Urban Development pursuant to 24 C.F.R. part 100 for
114 verification of occupancy, which rules provide for verification
115 by reliable surveys and affidavits and include examples of the
116 types of policies and procedures relevant to a determination of

19-01053-20 2020726__

117 compliance with the requirements of sub-subparagraph b. Such
 118 surveys and affidavits are admissible in administrative and
 119 judicial proceedings for the purposes of such verification.
 120 (c) Housing shall not fail to be considered housing for
 121 older persons if:
 122 1. A person who resides in such housing on or after October
 123 1, 1989, does not meet the age requirements of this subsection,
 124 provided that any new occupant meets such age requirements; or
 125 2. One or more units are unoccupied, provided that any
 126 unoccupied units are reserved for occupancy by persons who meet
 127 the age requirements of this subsection.
 128 (d) A person shall not be personally liable for monetary
 129 damages for a violation of this subsection if such person
 130 reasonably relied in good faith on the application of the
 131 exemption under this subsection relating to housing for older
 132 persons. For purposes of this paragraph, a person may show good
 133 faith reliance on the application of the exemption only by
 134 showing that:
 135 1. The person has no actual knowledge that the facility or
 136 the community is ineligible, or will become ineligible, for such
 137 exemption; and
 138 2. The facility or community has stated formally, in
 139 writing, that the facility or community complies with the
 140 requirements for such exemption.
 141 ~~(e) A facility or community claiming an exemption under~~
 142 ~~this subsection shall register with the commission and submit a~~
 143 ~~letter to the commission stating that the facility or community~~
 144 ~~complies with the requirements of subparagraph (b)1.,~~
 145 ~~subparagraph (b)2., or subparagraph (b)3. The letter shall be~~

19-01053-20 2020726__

146 ~~submitted on the letterhead of the facility or community and~~
 147 ~~shall be signed by the president of the facility or community.~~
 148 ~~This registration and documentation shall be renewed biennially~~
 149 ~~from the date of original filing. The information in the~~
 150 ~~registry shall be made available to the public, and the~~
 151 ~~commission shall include this information on an Internet~~
 152 ~~website. The commission may establish a reasonable registration~~
 153 ~~fee, not to exceed \$20, that shall be deposited into the~~
 154 ~~commission's trust fund to defray the administrative costs~~
 155 ~~associated with maintaining the registry. The commission may~~
 156 ~~impose an administrative fine, not to exceed \$500, on a facility~~
 157 ~~or community that knowingly submits false information in the~~
 158 ~~documentation required by this paragraph. Such fines shall be~~
 159 ~~deposited in the commission's trust fund. The registration and~~
 160 ~~documentation required by this paragraph shall not substitute~~
 161 ~~for proof of compliance with the requirements of this~~
 162 ~~subsection. Failure to comply with the requirements of this~~
 163 ~~paragraph shall not disqualify a facility or community that~~
 164 ~~otherwise qualifies for the exemption provided in this~~
 165 ~~subsection.~~
 166
 167 A county or municipal ordinance regarding housing for older
 168 persons may not contravene the provisions of this subsection.
 169 Section 5. Subsection (5) of section 760.31, Florida
 170 Statutes, is amended to read:
 171 760.31 Powers and duties of commission.—The commission
 172 shall:
 173 (5) Adopt rules necessary to implement ss. 760.20-760.37
 174 and govern the proceedings of the commission in accordance with

19-01053-20 2020726__
 175 chapter 120. Commission rules shall clarify terms used with
 176 regard to handicapped accessibility, exceptions from
 177 accessibility requirements based on terrain or site
 178 characteristics, and requirements related to housing for older
 179 persons. ~~Commission rules shall specify the fee and the forms~~
 180 ~~and procedures to be used for the registration required by s.~~
 181 ~~760.29(4)(c).~~

182 Section 6. Subsections (2) and (3) of section 760.60,
 183 Florida Statutes, are amended to read:

184 760.60 Discriminatory practices of certain clubs
 185 prohibited; remedies.-

186 (2) A person who has been discriminated against in
 187 violation of this act may file a complaint with the Commission
 188 on Human Relations or with the Attorney General's Office of
 189 Civil Rights. A complaint must be in writing and must contain
 190 such information and be in such form as the commission requires.
 191 Upon receipt of a complaint, the commission or the Attorney
 192 General shall provide a copy to the person who represents the
 193 club. Within 30 days after receiving a complaint, the commission
 194 or the Attorney General shall ~~investigate the alleged~~
 195 ~~discrimination and~~ give notice in writing to the person who
 196 filed the complaint if it intends to resolve the complaint. If
 197 the commission or the Attorney General decides to resolve the
 198 complaint, it shall attempt to eliminate or correct the alleged
 199 discriminatory practices of a club by informal methods of
 200 conference, conciliation, and persuasion.

201 (3) If the commission or the Attorney General fails, within
 202 30 days after receiving a complaint filed pursuant to subsection
 203 (2), to give notice of its intent to eliminate or correct the

19-01053-20 2020726__
 204 alleged discriminatory practices of a club, or if the commission
 205 or the Attorney General fails to resolve the complaint within 45
 206 ~~30~~ days after giving such notice, the person or the Attorney
 207 General on behalf of the person filing the complaint may
 208 commence a civil action in a court against the club, its
 209 officers, or its members to enforce this section. If the court
 210 finds that a discriminatory practice occurs at the club, the
 211 court may enjoin the club, its officers, or its members from
 212 engaging in such practice or may order other appropriate action.

213 Section 7. Subsections (1) and (2), paragraphs (d) and (e)
 214 of subsection (3), and paragraph (a) of subsection (4) of
 215 section 112.31895, Florida Statutes, are amended to read:

216 112.31895 Investigative procedures in response to
 217 prohibited personnel actions.-

218 (1) (a) If a disclosure under s. 112.3187 includes or
 219 results in alleged retaliation by an employer, the employee or
 220 former employee of, or applicant for employment with, a state
 221 agency, as defined in s. 216.011, that is so affected may file a
 222 complaint alleging a prohibited personnel action, which
 223 complaint must be made by filing a written complaint with the
 224 Office of the Chief Inspector General in the Executive Office of
 225 the Governor or the Florida Commission on Human Relations, no
 226 later than 60 days after the prohibited personnel action.

227 (b) Within 5 ~~three~~ working days after receiving a complaint
 228 under this section, the office or officer receiving the
 229 complaint shall acknowledge receipt of the complaint and provide
 230 copies of the complaint and any other preliminary information
 231 available concerning the disclosure of information under s.
 232 112.3187 to each of the other parties named in paragraph (a),

19-01053-20 2020726__

233 which parties shall each acknowledge receipt of such copies to
 234 the complainant.

235 (2) FACT FINDING.—The Florida Commission on Human Relations
 236 shall:

237 (a) Receive any allegation of a personnel action prohibited
 238 by s. 112.3187, including a proposed or potential action, and
 239 conduct informal fact finding regarding any allegation under
 240 this section, to the extent necessary to determine whether there
 241 are reasonable grounds to believe that a prohibited personnel
 242 action under s. 112.3187 has occurred, is occurring, or is to be
 243 taken.

244 ~~(b) Notify the complainant, within 15 days after receiving~~
 245 ~~a complaint, that the complaint has been received by the~~
 246 ~~department.~~

247 (b)(e) Within 180 ~~90~~ days after receiving the complaint,
 248 provide the agency head and the complainant with a fact-finding
 249 report that may include recommendations to the parties or
 250 proposed resolution of the complaint. The fact-finding report
 251 shall be presumed admissible in any subsequent or related
 252 administrative or judicial review.

253 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

254 (d) If the Florida Commission on Human Relations is unable
 255 to conciliate a complaint within 35 ~~60~~ days after receipt of the
 256 fact-finding report, the Florida Commission on Human Relations
 257 shall terminate the investigation. Upon termination of any
 258 investigation, the Florida Commission on Human Relations shall
 259 notify the complainant and the agency head of the termination of
 260 the investigation, providing a summary of relevant facts found
 261 during the investigation and the reasons for terminating the

19-01053-20 2020726__

262 investigation. A written statement under this paragraph is
 263 presumed admissible as evidence in any judicial or
 264 administrative proceeding but is not admissible without the
 265 consent of the complainant.

266 (e)1. The Florida Commission on Human Relations may request
 267 an agency or circuit court to order a stay, on such terms as the
 268 court requires, of any personnel action for 45 days if the
 269 Florida Commission on Human Relations determines that reasonable
 270 grounds exist to believe that a prohibited personnel action has
 271 occurred, is occurring, or is to be taken. The Florida
 272 Commission on Human Relations may request that such stay be
 273 extended for appropriate periods of time.

274 2. If, in connection with any investigation, the Florida
 275 Commission on Human Relations determines that reasonable grounds
 276 exist to believe that a prohibited action has occurred, is
 277 occurring, or is to be taken which requires corrective action,
 278 the Florida Commission on Human Relations shall report the
 279 determination together with any findings or recommendations to
 280 the agency head and may report that determination and those
 281 findings and recommendations to the Governor and the Chief
 282 Financial Officer. The Florida Commission on Human Relations may
 283 include in the report recommendations for corrective action to
 284 be taken.

285 3. If, after 35 ~~20~~ days, the agency does not implement the
 286 recommended action, the Florida Commission on Human Relations
 287 shall terminate the investigation and notify the complainant of
 288 the right to appeal under subsection (4), or may petition the
 289 agency for corrective action under this subsection.

290 4. If the Florida Commission on Human Relations finds, in

19-01053-20

2020726__

291 consultation with the individual subject to the prohibited
292 action, that the agency has implemented the corrective action,
293 the commission shall file such finding with the agency head,
294 together with any written comments that the individual provides,
295 and terminate the investigation.

296 (4) RIGHT TO APPEAL.—

297 (a) Not more than 21 ~~60~~ days after receipt of a notice of
298 termination of the investigation from the Florida Commission on
299 Human Relations, the complainant may file, with the Public
300 Employees Relations Commission, a complaint against the
301 employer-agency regarding the alleged prohibited personnel
302 action. The Public Employees Relations Commission shall have
303 jurisdiction over such complaints under ss. 112.3187 and
304 447.503(4) and (5).

305 Section 8. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/9/2019

Meeting Date

726

Bill Number (if applicable)

Topic FL Commission on Human Relations

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Chamber of Commerce

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 830

INTRODUCER: Senator Benacquisto

SUBJECT: OGSR/Certain Personal Financial and Health Information

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 830 amends s. 1009.987, F.S., to save from repeal the public records exemption relating to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer. This information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

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

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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 The right to inspect or copy 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

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.”

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

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Federal ABLÉ Act

The federal ABLÉ Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014.²⁷ The purpose of the ABLÉ Act is to encourage individuals and families to save money to support individuals with disabilities.²⁸ The ABLÉ Act permits a state to implement a qualified ABLÉ program and establish ABLÉ accounts for eligible individuals with disabilities that meet certain criteria.²⁹ A designated beneficiary of an ABLÉ account is an eligible individual who establishes an ABLÉ account and is the owner of such of an account.³⁰ An agent or parent may also establish an account on behalf of the eligible individual.³¹

Florida ABLÉ Program

An individual is an eligible individual for a taxable year if during such taxable year:³²

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

²⁸ *Id.*

²⁹ 26 U.S.C. s. 529A(e)(1).

³⁰ *Id.* at (e)(3). A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLÉ account, provided such new designated beneficiary is also an eligible individual. *Id.* at (e)(4).

³¹ Rule 19B-18.003, F.A.C., *Participation Agreement, Final ABLÉ Terms and Conditions*, Form No. FPCB 2018-08, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-09690>.

³² *Id.*; s. 1009.986(2)(d), F.S.

Under the Florida ABLE Program, eligible individuals with disabilities, family members, and others may contribute funds to an ABLE account, which supplements, rather than supplants, any federal benefits received by the beneficiary.³³ Those funds may be used for qualified disability expenses relating to the individual's blindness or disability. These expenses may include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations.³⁴

A consumer's personal financial and health information held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution.³⁵

A "consumer" means a party to a participation agreement of the Florida ABLE program.³⁶ The law provides that "personal financial and health information" means:³⁷

- A consumer's personal health condition, disease, injury, or medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind; or
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth.

The Florida Prepaid College Board and Florida ABLE, Inc., may disclose information made confidential and exempt to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.³⁸

Section 1009.987, F.S., provides for future review and repeal of the public records exemption on October 2, 2020.

Chapter 2015-58, L.O.F., which established the exemption from public record disclosure requirements for consumer information held under the Florida ABLE program, included a public necessity statement that provided rationale for the exemption. This rationale recognized that the disclosure of sensitive financial information regarding a consumer under the Florida ABLE program could create the opportunity for theft, identity theft, fraud, and other illegal activity, thereby jeopardizing the financial security of the consumer and placing him or her at risk for substantial financial harm. Furthermore, the disclosure of personal health information relating to

³³ Pub. L. 113-295, Div. B, Title I, §§ 101(2) and 103 (Dec. 19, 2014). Any amount in an ABLE account will be disregarded, except for the purpose of determining supplemental security income, any amount in excess of \$100,000 may cause a suspension in benefits. *Id.*; see also Letter from Brian Neale, U.S. Dep't of Health and Human Servs., *Implications of the ABLE Act for State Medicaid Programs* (Sept. 7, 2017), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/smd17002.pdf>.

³⁴ 26 U.S.C. s. 529A(e)(5).

³⁵ Section 1009.987, F.S.

³⁶ Section 1009.987(1)(a), F.S.

³⁷ Section 1009.987(1)(b), F.S.

³⁸ Section 1009.987(3), F.S.

a consumer under the Florida ABLÉ program could negatively affect an individual's business and personal relationships and cause detrimental financial consequences.³⁹

Open Government Sunset Review Findings and Recommendations

In June 2019, the Senate Education Committee and the House Oversight, Transparency & Public Management Subcommittee sent an Open Government Sunset Review Questionnaire to the Florida Prepaid College Board regarding the need to maintain the exemption related to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLÉ, Inc., the Florida ABLÉ program, or an agent or service provider of one of these entities relating to an ABLÉ account, or a participation agreement or any information that would identify a consumer.

The Florida Prepaid College Board responded to the questionnaire and recommended that the exemption remain in effect to protect the personal, financial, and health information for individuals associated with ABLÉ accounts in the Florida ABLÉ program.

III. Effect of Proposed Changes:

SB 830 saves from repeal the current public records exemption relating to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLÉ, Inc., the Florida ABLÉ program, or an agent or service provider of one of these entities relating to an ABLÉ account, or a participation agreement or any information that would identify a consumer. The information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

³⁹ Ch. 2015-58, L.O.F.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information of those who are employed by, under contract with, volunteering or engaged in activities related to animal research. This bill exempts only personal identifying information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.987 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.

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

By Senator Benacquisto

27-00652-20

2020830__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1009.987, F.S., which provides an exemption from public records requirements for certain personal financial and health information held by the Florida Prepaid College Board, Florida ABLE, Inc., or the Florida ABLE program, or an agent or service provider thereof; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 1009.987, Florida Statutes, is amended to read:

1009.987 Public records exemption.—

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

(a) "Consumer" means a party to a participation agreement.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, injury, or medical diagnosis or treatment;

2. The existence, nature, source, or amount of a consumer's personal income or expenses;

3. Records of or relating to a consumer's personal financial transactions of any kind; or

4. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth.

(2) The personal financial and health information of a consumer held by the Florida Prepaid College Board, Florida ABLE, Inc., or the Florida ABLE program, or an agent or service

Page 1 of 2

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

27-00652-20

2020830__

provider thereof, relating to an ABLE account or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The Florida Prepaid College Board or Florida ABLE, Inc., may authorize the disclosure of information made confidential and exempt under subsection (2) to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.

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

Section 2. This act shall take effect October 1, 2020.

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 7004

INTRODUCER: Finance and Tax Committee

SUBJECT: OGSR/Taxpayer E-mail Addresses Held by a Tax Collector

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Babin</u>	<u>Diez-Arguelles</u>		FT Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>_____</u>

I. Summary:

SB 7004 amends s. 197.3225, Florida Statutes, to save from repeal the current public records exemption for e-mail addresses used by a tax collector to send certain tax notices, by removing the scheduled October 2, 2020, repeal date.

The bill continues to exempt from public disclosure those taxpayer e-mail addresses held by a tax collector for the purposes of:

- Sending a quarterly tax notice for prepayment of estimated taxes pursuant to s. 197.222, F.S.;
- Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice to the taxpayer pursuant to s. 197.343, F.S.; or
- Sending a tax notice to a designated third party, mortgagee, or vendee pursuant to s. 197.344(1), F.S.

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

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

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.”

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

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Property Tax Notices

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.²⁷ The property appraiser annually determines the “just value”²⁸ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's taxable value.²⁹

Taxpayers receive certain notices at various stages of the property tax administration process. For example:

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

²⁸ Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

²⁹ See s. 192.001(2) and (16), F.S.

- In August of each year, property appraisers send each taxpayer a notice of proposed property taxes, alerting the taxpayer of the property appraiser's proposed assessment for the taxpayer's property and the resulting tax that could be due, depending upon the local governments' adopted budgets.³⁰
- In November of each year, tax collectors send tax notices to each taxpayer, informing the taxpayer of the amount of taxes due.³¹ Taxes are generally due by the following March 31. Upon request by a mortgagee who holds property tax payments in escrow, tax collectors send this tax notice to the mortgagee.³²
- Tax collectors send notices by April 30 to each taxpayer who has not paid his or her tax bill, alerting the taxpayer that a tax certificate could be sold.³³

Historically, tax notices have been sent to the taxpayer using postal mail.³⁴ In 2011, the Legislature authorized tax collectors, after taxpayer consent, to deliver certain tax notices via electronic means.³⁵ Often, e-mail is the electronic means used by tax collectors to send notices.

Public Records Exemption for E-Mail Addresses held by Tax Collectors for Certain Purposes

In 2015, the Legislature created s. 197.3225, F.S., to exempt from disclosure e-mail addresses held by tax collectors for the following purposes:

- Sending a quarterly tax notice for prepayment of estimated taxes pursuant to section 197.222(3), F.S.;
- Obtaining a taxpayer's consent to electronically send the tax notice (the annual tax bill) described in section 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice (annual tax bill/delinquency notice) pursuant to section 197.343, F.S.;
- Sending a tax notice (the annual tax bill) to a designated third party, mortgagee, or vendee pursuant to section 197.344(1), F.S.

Section 197.3225(2), F.S., provides for repeal of the exemption pursuant to the Act on October 2, 2020, unless reviewed and saved from repeal by the Legislature. Chapter 2015-13, Laws of Florida, which created the exemption, provides a statement of public necessity.³⁶ The statement finds that, when combined with other personal identifying information, e-mail addresses can be used for identity theft, taxpayer scams, and other invasive contacts.

Tax collectors have indicated that they have received public records requests for e-mail addresses.³⁷

³⁰ Section 200.069, F.S.

³¹ Section 197.322(3), F.S.

³² Section 197.344(1)(b), F.S.

³³ Section 197.343(1), F.S.

³⁴ *See, e.g.*, ss. 200.069, F.S. (requiring the notice of proposed property taxes to be sent by first-class mail); and 197.322(3), F.S. (authorizing the tax notice notifying the taxpayer of the amount of taxes due to be sent by postal mail).

³⁵ *See generally* ch. 2011-151, Laws of Fla.

³⁶ Section 2, ch. 2015-13, Laws of Fla.

³⁷ *See, e.g.*, Questionnaire Response by Sarasota County Tax Collector's Office, June 2019 (on file with The Senate Committee on Finance and Tax.)

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 197.3225, F.S., which exempts from public disclosure and inspection those e-mail addresses held by tax collectors for the purpose of sending certain tax notices to taxpayers. The bill continues the exemption from public disclosure by removing the repeal date.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records exemption without an expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information contained in a record held by a tax collector for certain purposes. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 197.3225 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 Finance and Tax

593-01456-20

20207004__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 197.3225, F.S.,
 4 relating to an exemption from public records
 5 requirements for taxpayer e-mail addresses held by a
 6 tax collector for certain purposes; removing the
 7 scheduled repeal of the exemption; providing an
 8 effective date.

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

11
 12 Section 1. Section 197.3225, Florida Statutes, is amended
 13 to read:

14 197.3225 Public records exemption; taxpayer e-mail
 15 addresses.-

16 ~~(1)~~ A taxpayer's e-mail address held by a tax collector for
 17 any of the following purposes is exempt from s. 119.07(1) and s.
 18 24(a), Art. I of the State Constitution:

19 (1)(a) Sending a quarterly tax notice for prepayment of
 20 estimated taxes to the taxpayer pursuant to s. 197.222(3).

21 (2)(b) Obtaining the taxpayer's consent to send the tax
 22 notice described in s. 197.322(3).

23 (3)(c) Sending an additional tax notice or delinquent tax
 24 notice to the taxpayer pursuant to s. 197.343.

25 (4)(d) Sending a tax notice to a designated third party,
 26 mortgagee, or vendee pursuant to s. 197.344(1).

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

Page 1 of 2

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

593-01456-20

20207004__

30 ~~through reenactment by the Legislature.~~

31 Section 2. This act shall take effect October 1, 2020.

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: Education Committee

SUBJECT: OGSR/Animal Medical Records/State College of Veterinary Medicine

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brick</u>	<u>Sikes</u>		ED Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7008 amends s. 474.2167, Florida Statutes, to save from repeal the current public records exemption for animal medical records held by or transferred to any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education, by removing the scheduled October 2, 2020, repeal date.

The bill continues to maintain certain medical records as confidential and exempt from public inspection and copying. The affected records include a medical record generated by or transferred to an accredited state college of veterinary medicine which relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal. These confidential medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities, or to others with consent of the client.

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

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy applies

¹ FLA. CONST. art. I, s. 24(a).

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

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.”

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

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Confidentiality of Animal Medical Records

Section 474.2165, F.S., prohibits the disclosure of records or information concerning the medical condition of a patient of veterinary medical services to any person other than the client or the client's legal representative or other veterinarians involved in the care or treatment of the patient, except upon written authorization of the client. However, such records may be furnished without written authorization under the following circumstances:²⁷

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the client's consent.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the client or the client's legal representative by the party seeking such records.
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient and the client, or provided written permission is received from the client or the client's legal representative.

Section 474.2167, F.S., provides an exemption from public record disclosure requirements for animal medical records held by or transferred to any state college of veterinary medicine

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 474.2165(4), F.S.

accredited by the American Veterinary Medical Association (AVMA) Council on Education.²⁸ Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities and in accordance with the existing laws governing veterinary medical records at a private clinic.

Section 474.2167, F.S., provides for future review and repeal of the public records exemption on October 2, 2020.

Chapter 2015-62, L.O.F., which established the exemption from public record disclosure requirements for animal medical records, included a public necessity statement that provided the rationale for the exemption. This rationale recognized that the release of such animal medical records compromises the confidentiality protections otherwise afforded the owners of such animals treated by licensed veterinarians in this state. Furthermore, this exemption permits a state college of veterinary medicine accredited by the AMVA Council on Education to effectively and efficiently carry out its mission to educate students in veterinary medicine.²⁹

Open Government Sunset Review Findings and Recommendations

In June 2019, the Senate Education Committee and the House Oversight, Transparency & Public Management Subcommittee, in consultation with the Florida Board of Governors, sent an Open Government Sunset Review Questionnaire to the University of Florida (UF) College of Veterinary Medicine, which is the only state college of veterinary medicine accredited by the AVMA Council on Education.³⁰

The UF College of Veterinary Medicine responded that it achieves its core business of training the next generation of veterinarians through clinical teaching material provided by the animals that visit the UF Veterinary Hospital.³¹ If the exemption is repealed, the UF Veterinary Hospital would be the only veterinary medical practice in the State of Florida without confidentiality protections for records and information concerning veterinary medical services. The UF College of Veterinary Medicine recommended the exemption be reenacted to enable the continued training of the next generation of veterinarians who will meet the future needs of animal owners in Florida.

III. Effect of Proposed Changes:

SB 7008 saves from repeal the current public records exemption relating to animal medical records held by or transferred to any state college of veterinary medicine accredited by the

²⁸ The AVMA Council on Education is recognized by the Council for Higher Education Accreditation as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Aug. 2, 2019).

²⁹ Ch. 2015-62, L.O.F.

³⁰ Email, Florida Board of Governors (June 27, 2019); and University of Florida College of Veterinary Medicine, *Open Government Sunset Review Questionnaire (Animal Medical Records)* (July 8, 2019).

³¹ University of Florida College of Veterinary Medicine, *Open Government Sunset Review Questionnaire (Animal Medical Records)* (July 8, 2019), on file with the Committee on Education.

AVMA Council on Education, by removing the scheduled repeal date. These records will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the confidentiality of animal medical records held by or transferred to any state college of veterinary medicine accredited by the AMVA Council on Education. This bill exempts only animal medical records held by or transferred to any state college of veterinary medicine accredited by the AVMA Council on Education from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with a state college of veterinary medicine accredited by the AMVA Council on Education making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

State colleges of veterinary medicine accredited by the AMVA Council on Education will continue to incur costs related to the redaction of records and copying costs associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 474.2167 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 Education

581-01405-20

20207008__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 474.2167, F.S., which provides an exemption from public records requirements for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 474.2167, Florida Statutes, is amended to read:

474.2167 Confidentiality of animal medical records.—

(1) The following records held by any state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) A medical record generated which relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal; and

(b) A medical record described in paragraph (a) which is transferred by a previous record owner in connection with the

Page 1 of 2

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

581-01405-20

20207008__

transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

(2) A record made confidential and exempt under subsection (1) may be disclosed to another governmental entity in the performance of its duties and responsibilities and may be disclosed pursuant to s. 474.2165.

(3) The exemption from public records requirements under subsection (1) applies to animal medical records held before, on, or after the effective date of this exemption.

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

Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

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

Redig, Tamra

From: Ruiz, Judith
Sent: Monday, December 9, 2019 12:15 PM
To: Redig, Tamra
Subject: Request for Senator Bean to Present 7008

Good Morning Ms. Redig,

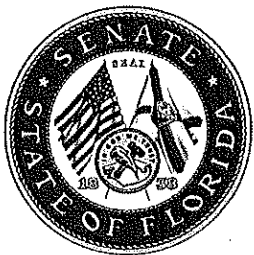
As per Senator Many Diaz, Jr. request, please note that Senator Bean will be presenting Bill 7008 on the Government Oversight and Accountability committee as requested by Senator Diaz.

Senator Diaz will be preceding over the Education Committee meeting today and it poses as a conflict. If you have any questions please call us.

Judith Ruiz

Legislative Assistant/Chief of Staff
Senator Manny Diaz Jr.
District 36
10001 NW 87 Avenue
Hialeah, Florida 33016
305-364-3073

306 Senate Building
404 South Monroe Stree
Tallahassee, Florida 32399-1100
850-487-5036



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 444

INTRODUCER: Senator Rader

SUBJECT: Customer Service Standards for State Agencies

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.	_____	_____	IT	_____
3.	_____	_____	RC	_____

I. Summary:

SB 444 amends the Florida Customer Service Standards Act to require all state departments to employ a telephone system that allows a caller to press “0” to be connected to an operator or be provided with a call-back option.

State agencies may incur additional costs to comply with the requirements of this bill.

The bill takes effect on October 1, 2020.

II. Present Situation:

Florida Customer Service Standards Act

The Florida Customer Service Standards Act directs executive branch agencies and the Public Service Commission to practice and employ certain measures to improve customer service.¹ For purposes of this act, a “customer” means any person who uses or requests services or information provided by a state executive agency or who is required by statute to interact with the agency.² The measures most pertinent to this legislation include:

- Designating an employee or employees to facilitate the resolution of customer complaints.
- Promptly providing available information and accurate responses to questions and requests for assistance.
- Acknowledging receipt of telephonic or electronic question or request by the end of the next business day.

¹ Section 23.30, F.S.

² Section 20.30(3)(a), F.S.

- Providing local or toll-free telephonic or electronic access either through a centralized complaint-intake call center or directly to a departmental employee or employees designated to resolve customer complaints.³

The act does not include funding to comply or penalties for failure to comply.⁴

Voice Mail Systems

There is no statutory requirement for state agencies to employ a voice mail system or a telephone menu options system. However, if the state agency employs such systems, the use must be consistent with the following:

- A state employee may not use a voice mail system when the employee is at his regularly assigned work station where the telephone is functional and available for use, unless the telephone is in use, the voice mail system provides the caller with access to a nonelectronic attendant, or the voice mail system automatically transfers the call to a nonelectronic attendant.⁵
- A telephone menu options system used by a state agency must alert the caller to, and provide the caller with access to, a nonelectronic attendant.⁶

The agency head is required to ensure compliance with these provisions.⁷

For purposes of these requirements, the term “state agency” includes executive and judicial branch entities of the state.⁸

The level of compliance by state agencies is unknown.

III. Effect of Proposed Changes:

Section 1 amends s. 20.30, F.S., to require each state executive branch agency and the Public Service Commission to employ a telephone system that allows a customer to be connected to an operator (presumably a nonelectronic attendant) or be provided with a call-back option.

Section 2 provides the bill takes effect on October 1, 2020.

³ Section 23.30(4), F.S.

⁴ Section 23.30(6), (7), F.S.

⁵ Section 110.1082(1), F.S.

⁶ Section 110.1082(2), F.S.

⁷ Section 110.1082(3), F.S.

⁸ Section 110.105(30), F.S.

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 a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A state agency may incur indeterminate costs to the extent the agency does not currently use a system with the required features. Some state agencies may incur additional costs to ensure there are sufficient operators for more heavily trafficked phone lines, such as the Department of Management Services' state information phone line.

VI. Technical Deficiencies:

The Legislature may want to consider amending s. 110.1082(2), F.S., to allow a state agency to allow its telephone menu options system to provide a call-back option.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 23.30 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.

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

By Senator Rader

29-00521-20

2020444__

1 A bill to be entitled

2 An act relating to customer service standards for
3 state agencies; amending s. 23.30, F.S.; requiring
4 departments within the executive branch of state
5 government to implement certain measures with respect
6 to telephone calls placed by customers; providing an
7 effective date.

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

10
11 Section 1. Present paragraphs (c) through (k) of subsection
12 (4) of section 23.30, Florida Statutes, are redesignated as
13 paragraphs (d) through (l), respectively, and a new paragraph
14 (c) is added to that subsection, to read:

15 23.30 Florida Customer Service Standards Act.—

16 (4) MEASURES TO BE IMPLEMENTED.—State departments shall:

17 (c) Employ a system by which a customer who contacts a
18 department by telephone may press "0" to be transferred to an
19 operator or is provided with a call-back option in lieu of
20 waiting on hold.

21 Section 2. This act shall take effect October 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER

29th District

October 16, 2019

Chairman Ed Hooper
Committee on Governmental Oversight and Accountability
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Hooper,

I respectfully request that you place SB 444, relating to Customer Service Standards for State Agencies, on the agenda of the Committee on Governmental Oversight and Accountability at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in black ink that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

cc: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 248

INTRODUCER: Senator Hooper

SUBJECT: Public Records/County Attorneys and Assistant County Attorneys

DATE: December 6, 2019

REVISED: _____

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

I. Summary:

SB 248 exempts from public inspection and copying certain information held by an agency that could identify or locate current or former county attorneys or assistant county attorneys and their spouses and children.

A county attorney is selected by the board of county commissioners and provides legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. The county attorney also drafts and reviews contracts and initiates and defends civil actions in court on behalf of the county.

The bill exempts from public disclosure the following information that relates to current or former county attorneys or assistant county attorneys:

- Their home addresses, telephone numbers, dates of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

The bill provides a statement of public necessity as required by the State Constitution.

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

The bill takes effect July 1, 2020.

II. Present Situation:

Public Records Law

Overview

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

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

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.⁴

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

Legislative and Judicial Records

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

Definition

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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).

Access

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Exemptions

The Legislature, alone, has the authority to create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose 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;¹²
- 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;¹³ or
- It protects trade or business secrets.¹⁴

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

“Confidential and Exempt” or “Exempt” Designations

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁷ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁸

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² Section 119.15(6)(b)1., F.S.

¹³ Section 119.15(6)(b)2., F.S.

¹⁴ Section 119.15(6)(b)3., F.S.

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., art. I, s. 24(c) and FLA. CONST., art., X, s. 12(e).

¹⁷ If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁹ with specified exceptions.²⁰ It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²²

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²³

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁴ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁵

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁶ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of

¹⁹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

- 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?

²³ Section 119.071(4)(a) and (b), F.S.

²⁴ Section 119.071(4)(a)1., F.S.

²⁵ Section 119.071(4)(a), F.S.

²⁶ Section 119.071(5)(a)5., F.S.

that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.²⁷

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.²⁸

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.²⁹

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.³⁰ Additionally, all of these exemptions have retroactive application.³¹

County Attorneys and Assistant County Attorneys

A county attorney is selected by the board of county commissioners to serve as the chief legal counsel for the county. The county attorney is authorized to appoint assistant attorneys to help in the performance of the duties and in the administration of the office. County attorneys provide legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. They also draft and review contracts and ordinances and initiate and defend civil actions on behalf of the county in state and federal court.

Because county attorneys are often tasked with, or directly involved in, firing disgruntled employees, prosecuting code enforcement violations, and resolving other controversial matters involving the use of someone's land or the removal of animals for suspected neglect and abuse, they find themselves in difficult and emotionally-inflamed situations. Instances have been reported in which persons who felt that they were mistreated by the county attorney or who were angry with an outcome retaliated. Forms of retaliation included attempts to confront the attorney away from the office, posts of personal identifying information on social media in an effort to intimidate the attorney, and threats issued in person and online. As a result of one reported

²⁷ Section 119.071(5)(a)5.f. and g., F.S.

²⁸ Section 119.071(4)(b)1., F.S.

²⁹ Section 119.071(4)(b)2., F.S.

³⁰ Section 119.071(4)(d)3., F.S.

³¹ Section 119.071(4)(d)5., F.S.

instance, a law enforcement officer escorted a threatened county attorney for extended periods of time to ensure his protection while traveling to meetings and hearings.³²

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2., F.S., to exempt certain information pertaining to current or former county attorneys or assistant county attorneys from the public disclosure requirements of the public record laws. The following information for a current or former county attorney or assistant county attorney will be exempt:

- The county attorney or assistant county attorney's home addresses, telephone numbers, date of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the attorney's spouse and children.
- The names and locations of schools and day care facilities attended by the attorney's children.

Pursuant to subparagraph 5., this exemption will apply to information held by an agency before, on, or after July 1, 2020.

Pursuant to subparagraph 6., this exemption will be subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

Section 2 contains the public necessity statement which explains why the exemption is necessary. The public necessity statement provides that the release of the personal identifying and location information could place current or former county attorneys or assistant county attorneys in danger of being physically and emotionally harmed or stalked by a defendant or other person. Accordingly, the statement asserts that the harm that may result from releasing the information outweighs any public benefit that may be realized from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions in the State Constitution 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.

³² Telephone interviews with the Florida Association of County Attorneys in Tallahassee, the Charlotte County Attorney's Office in Port Charlotte, and the St. Johns County Attorney in St. Augustine (October 30, 2019).

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

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for final passage of a bill creating an exemption to the public records requirements.³³

Because this bill creates an exemption for current or former county attorneys or assistant county attorneys, it requires a two-thirds vote of each house to be enacted.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement notes that this exemption is necessary to protect current or former county attorneys or assistant county attorneys and their families from being physically and emotionally harmed or stalked and is narrowly drawn to protect them. For this reason, the exemption does not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

³³ Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a “Vote or other action of a legislative house . . . means the vote or action of a majority or other specified percentage of those members voting on the matter.” Accordingly, this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.

B. Private Sector Impact:

An individual or business that requests location information that is covered by the definition of “home address” in the bill will not be able to readily obtain that information from the records custodian. If the employee or the employee’s agency has taken the initiative and requested that the home address information be exempted from disclosure, the protected person will need to sign a waiver granting permission to the records custodian to release the information to the requestor.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on agencies that hold identifying information exempted by this bill. The agencies may need to train staff in order for them to be able to comply with public records requests and perform any necessary redactions before releasing a record. However, the costs could be absorbed by the agencies as part of their day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the *5th* year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the *4th* year after enactment instead of the *5th* year. It can be reasoned, however, that advancing the scheduled review and repeal by one year is not problematic because the deviation is supported by the reasoning that a previous Legislature cannot bind this Legislature.

VIII. Statutes Affected:

This bill substantially amends section 119.071, 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 Hooper

16-00442-20

2020248__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of current and former county
 6 attorneys and assistant county attorneys and the names
 7 and personal identifying and location information of
 8 the spouses and children of such attorneys; providing
 9 a statement of public necessity; providing an
 10 effective date.
 11
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term:
 21 a. "Home addresses" means the dwelling location at which an
 22 individual resides and includes the physical address, mailing
 23 address, street address, parcel identification number, plot
 24 identification number, legal property description, neighborhood
 25 name and lot number, GPS coordinates, and any other descriptive
 26 property information that may reveal the home address.
 27 b. "Telephone numbers" includes home telephone numbers,
 28 personal cellular telephone numbers, personal pager telephone
 29 numbers, and telephone numbers associated with personal

Page 1 of 12

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

16-00442-20

2020248__

30 communications devices.
 31 2.a. The home addresses, telephone numbers, dates of birth,
 32 and photographs of active or former sworn law enforcement
 33 personnel or of active or former civilian personnel employed by
 34 a law enforcement agency, including correctional and
 35 correctional probation officers, personnel of the Department of
 36 Children and Families whose duties include the investigation of
 37 abuse, neglect, exploitation, fraud, theft, or other criminal
 38 activities, personnel of the Department of Health whose duties
 39 are to support the investigation of child abuse or neglect, and
 40 personnel of the Department of Revenue or local governments
 41 whose responsibilities include revenue collection and
 42 enforcement or child support enforcement; the names, home
 43 addresses, telephone numbers, photographs, dates of birth, and
 44 places of employment of the spouses and children of such
 45 personnel; and the names and locations of schools and day care
 46 facilities attended by the children of such personnel are exempt
 47 from s. 119.07(1) and s. 24(a), Art. I of the State
 48 Constitution.
 49 b. The home addresses, telephone numbers, dates of birth,
 50 and photographs of current or former nonsworn investigative
 51 personnel of the Department of Financial Services whose duties
 52 include the investigation of fraud, theft, workers' compensation
 53 coverage requirements and compliance, other related criminal
 54 activities, or state regulatory requirement violations; the
 55 names, home addresses, telephone numbers, dates of birth, and
 56 places of employment of the spouses and children of such
 57 personnel; and the names and locations of schools and day care
 58 facilities attended by the children of such personnel are exempt

Page 2 of 12

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

16-00442-20

2020248__

59 from s. 119.07(1) and s. 24(a), Art. I of the State
60 Constitution.

61 c. The home addresses, telephone numbers, dates of birth,
62 and photographs of current or former nonsworn investigative
63 personnel of the Office of Financial Regulation's Bureau of
64 Financial Investigations whose duties include the investigation
65 of fraud, theft, other related criminal activities, or state
66 regulatory requirement violations; the names, home addresses,
67 telephone numbers, dates of birth, and places of employment of
68 the spouses and children of such personnel; and the names and
69 locations of schools and day care facilities attended by the
70 children of such personnel are exempt from s. 119.07(1) and s.
71 24(a), Art. I of the State Constitution.

72 d. The home addresses, telephone numbers, dates of birth,
73 and photographs of current or former firefighters certified in
74 compliance with s. 633.408; the names, home addresses, telephone
75 numbers, photographs, dates of birth, and places of employment
76 of the spouses and children of such firefighters; and the names
77 and locations of schools and day care facilities attended by the
78 children of such firefighters are exempt from s. 119.07(1) and
79 s. 24(a), Art. I of the State Constitution.

80 e. The home addresses, dates of birth, and telephone
81 numbers of current or former justices of the Supreme Court,
82 district court of appeal judges, circuit court judges, and
83 county court judges; the names, home addresses, telephone
84 numbers, dates of birth, and places of employment of the spouses
85 and children of current or former justices and judges; and the
86 names and locations of schools and day care facilities attended
87 by the children of current or former justices and judges are

Page 3 of 12

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

16-00442-20

2020248__

88 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
89 Constitution.

90 f. The home addresses, telephone numbers, dates of birth,
91 and photographs of current or former state attorneys, assistant
92 state attorneys, statewide prosecutors, or assistant statewide
93 prosecutors; the names, home addresses, telephone numbers,
94 photographs, dates of birth, and places of employment of the
95 spouses and children of current or former state attorneys,
96 assistant state attorneys, statewide prosecutors, or assistant
97 statewide prosecutors; and the names and locations of schools
98 and day care facilities attended by the children of current or
99 former state attorneys, assistant state attorneys, statewide
100 prosecutors, or assistant statewide prosecutors are exempt from
101 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

102 g. The home addresses, dates of birth, and telephone
103 numbers of general magistrates, special magistrates, judges of
104 compensation claims, administrative law judges of the Division
105 of Administrative Hearings, and child support enforcement
106 hearing officers; the names, home addresses, telephone numbers,
107 dates of birth, and places of employment of the spouses and
108 children of general magistrates, special magistrates, judges of
109 compensation claims, administrative law judges of the Division
110 of Administrative Hearings, and child support enforcement
111 hearing officers; and the names and locations of schools and day
112 care facilities attended by the children of general magistrates,
113 special magistrates, judges of compensation claims,
114 administrative law judges of the Division of Administrative
115 Hearings, and child support enforcement hearing officers are
116 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Page 4 of 12

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

16-00442-20 2020248__

117 Constitution.

118 h. The home addresses, telephone numbers, dates of birth,

119 and photographs of current or former human resource, labor

120 relations, or employee relations directors, assistant directors,

121 managers, or assistant managers of any local government agency

122 or water management district whose duties include hiring and

123 firing employees, labor contract negotiation, administration, or

124 other personnel-related duties; the names, home addresses,

125 telephone numbers, dates of birth, and places of employment of

126 the spouses and children of such personnel; and the names and

127 locations of schools and day care facilities attended by the

128 children of such personnel are exempt from s. 119.07(1) and s.

129 24(a), Art. I of the State Constitution.

130 i. The home addresses, telephone numbers, dates of birth,

131 and photographs of current or former code enforcement officers;

132 the names, home addresses, telephone numbers, dates of birth,

133 and places of employment of the spouses and children of such

134 personnel; and the names and locations of schools and day care

135 facilities attended by the children of such personnel are exempt

136 from s. 119.07(1) and s. 24(a), Art. I of the State

137 Constitution.

138 j. The home addresses, telephone numbers, places of

139 employment, dates of birth, and photographs of current or former

140 guardians ad litem, as defined in s. 39.820; the names, home

141 addresses, telephone numbers, dates of birth, and places of

142 employment of the spouses and children of such persons; and the

143 names and locations of schools and day care facilities attended

144 by the children of such persons are exempt from s. 119.07(1) and

145 s. 24(a), Art. I of the State Constitution.

16-00442-20 2020248__

146 k. The home addresses, telephone numbers, dates of birth,

147 and photographs of current or former juvenile probation

148 officers, juvenile probation supervisors, detention

149 superintendents, assistant detention superintendents, juvenile

150 justice detention officers I and II, juvenile justice detention

151 officer supervisors, juvenile justice residential officers,

152 juvenile justice residential officer supervisors I and II,

153 juvenile justice counselors, juvenile justice counselor

154 supervisors, human services counselor administrators, senior

155 human services counselor administrators, rehabilitation

156 therapists, and social services counselors of the Department of

157 Juvenile Justice; the names, home addresses, telephone numbers,

158 dates of birth, and places of employment of spouses and children

159 of such personnel; and the names and locations of schools and

160 day care facilities attended by the children of such personnel

161 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

162 Constitution.

163 l. The home addresses, telephone numbers, dates of birth,

164 and photographs of current or former public defenders, assistant

165 public defenders, criminal conflict and civil regional counsel,

166 and assistant criminal conflict and civil regional counsel; the

167 names, home addresses, telephone numbers, dates of birth, and

168 places of employment of the spouses and children of current or

169 former public defenders, assistant public defenders, criminal

170 conflict and civil regional counsel, and assistant criminal

171 conflict and civil regional counsel; and the names and locations

172 of schools and day care facilities attended by the children of

173 current or former public defenders, assistant public defenders,

174 criminal conflict and civil regional counsel, and assistant

16-00442-20 2020248__

175 criminal conflict and civil regional counsel are exempt from s.
 176 119.07(1) and s. 24(a), Art. I of the State Constitution.

177 m. The home addresses, telephone numbers, dates of birth,
 178 and photographs of current or former investigators or inspectors
 179 of the Department of Business and Professional Regulation; the
 180 names, home addresses, telephone numbers, dates of birth, and
 181 places of employment of the spouses and children of such current
 182 or former investigators and inspectors; and the names and
 183 locations of schools and day care facilities attended by the
 184 children of such current or former investigators and inspectors
 185 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 186 Constitution.

187 n. The home addresses, telephone numbers, and dates of
 188 birth of county tax collectors; the names, home addresses,
 189 telephone numbers, dates of birth, and places of employment of
 190 the spouses and children of such tax collectors; and the names
 191 and locations of schools and day care facilities attended by the
 192 children of such tax collectors are exempt from s. 119.07(1) and
 193 s. 24(a), Art. I of the State Constitution.

194 o. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former personnel of the Department
 196 of Health whose duties include, or result in, the determination
 197 or adjudication of eligibility for social security disability
 198 benefits, the investigation or prosecution of complaints filed
 199 against health care practitioners, or the inspection of health
 200 care practitioners or health care facilities licensed by the
 201 Department of Health; the names, home addresses, telephone
 202 numbers, dates of birth, and places of employment of the spouses
 203 and children of such personnel; and the names and locations of

Page 7 of 12

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

16-00442-20 2020248__

204 schools and day care facilities attended by the children of such
 205 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 206 the State Constitution.

207 p. The home addresses, telephone numbers, dates of birth,
 208 and photographs of current or former impaired practitioner
 209 consultants who are retained by an agency or current or former
 210 employees of an impaired practitioner consultant whose duties
 211 result in a determination of a person's skill and safety to
 212 practice a licensed profession; the names, home addresses,
 213 telephone numbers, dates of birth, and places of employment of
 214 the spouses and children of such consultants or their employees;
 215 and the names and locations of schools and day care facilities
 216 attended by the children of such consultants or employees are
 217 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 218 Constitution.

219 q. The home addresses, telephone numbers, dates of birth,
 220 and photographs of current or former emergency medical
 221 technicians or paramedics certified under chapter 401; the
 222 names, home addresses, telephone numbers, dates of birth, and
 223 places of employment of the spouses and children of such
 224 emergency medical technicians or paramedics; and the names and
 225 locations of schools and day care facilities attended by the
 226 children of such emergency medical technicians or paramedics are
 227 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 228 Constitution.

229 r. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former personnel employed in an
 231 agency's office of inspector general or internal audit
 232 department whose duties include auditing or investigating waste,

Page 8 of 12

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

16-00442-20 2020248__
 233 fraud, abuse, theft, exploitation, or other activities that
 234 could lead to criminal prosecution or administrative discipline;
 235 the names, home addresses, telephone numbers, dates of birth,
 236 and places of employment of spouses and children of such
 237 personnel; and the names and locations of schools and day care
 238 facilities attended by the children of such personnel are exempt
 239 from s. 119.07(1) and s. 24(a), Art. I of the State
 240 Constitution.

241 s. The home addresses, telephone numbers, dates of birth,
 242 and photographs of current or former directors, managers,
 243 supervisors, nurses, and clinical employees of an addiction
 244 treatment facility; the home addresses, telephone numbers,
 245 photographs, dates of birth, and places of employment of the
 246 spouses and children of such personnel; and the names and
 247 locations of schools and day care facilities attended by the
 248 children of such personnel are exempt from s. 119.07(1) and s.
 249 24(a), Art. I of the State Constitution. For purposes of this
 250 sub-subparagraph, the term "addiction treatment facility" means
 251 a county government, or agency thereof, that is licensed
 252 pursuant to s. 397.401 and provides substance abuse prevention,
 253 intervention, or clinical treatment, including any licensed
 254 service component described in s. 397.311(26).

255 t. The home addresses, telephone numbers, dates of birth,
 256 and photographs of current or former directors, managers,
 257 supervisors, and clinical employees of a child advocacy center
 258 that meets the standards of s. 39.3035(1) and fulfills the
 259 screening requirement of s. 39.3035(2), and the members of a
 260 Child Protection Team as described in s. 39.303 whose duties
 261 include supporting the investigation of child abuse or sexual

16-00442-20 2020248__
 262 abuse, child abandonment, child neglect, and child exploitation
 263 or to provide services as part of a multidisciplinary case
 264 review team; the names, home addresses, telephone numbers,
 265 photographs, dates of birth, and places of employment of the
 266 spouses and children of such personnel and members; and the
 267 names and locations of schools and day care facilities attended
 268 by the children of such personnel and members are exempt from s.
 269 119.07(1) and s. 24(a), Art. I of the State Constitution.

270 u. The home addresses, telephone numbers, dates of birth,
 271 and photographs of current or former county attorneys or
 272 assistant county attorneys; the names, home addresses, telephone
 273 numbers, photographs, dates of birth, and places of employment
 274 of the spouses and children of current or former county
 275 attorneys or assistant county attorneys; and the names and
 276 locations of schools and day care facilities attended by the
 277 children of current or former county attorneys or assistant
 278 county attorneys are exempt from s. 119.07(1) and s. 24(a), Art.
 279 I of the State Constitution.

280 3. An agency that is the custodian of the information
 281 specified in subparagraph 2. and that is not the employer of the
 282 officer, employee, justice, judge, or other person specified in
 283 subparagraph 2. shall maintain the exempt status of that
 284 information only if the officer, employee, justice, judge, other
 285 person, or employing agency of the designated employee submits a
 286 written request for maintenance of the exemption to the
 287 custodial agency.

288 4. An officer, an employee, a justice, a judge, or other
 289 person specified in subparagraph 2. may submit a written request
 290 for the release of his or her exempt information to the

16-00442-20 2020248__
 291 custodial agency. The written request must be notarized and must
 292 specify the information to be released and the party that is
 293 authorized to receive the information. Upon receipt of the
 294 written request, the custodial agency shall release the
 295 specified information to the party authorized to receive such
 296 information.

297 5. The exemptions in this paragraph apply to information
 298 held by an agency before, on, or after the effective date of the
 299 exemption.

300 6. This paragraph is subject to the Open Government Sunset
 301 Review Act in accordance with s. 119.15 and shall stand repealed
 302 on October 2, 2024, unless reviewed and saved from repeal
 303 through reenactment by the Legislature.

304 Section 2. The Legislature finds that it is a public
 305 necessity that the home addresses, dates of birth, telephone
 306 numbers, and photographs of current or former county attorneys
 307 and assistant county attorneys be made exempt from s. 119.07(1),
 308 Florida Statutes, and s. 24(a), Article I of the State
 309 Constitution. The Legislature further finds that it is a public
 310 necessity that the names, home addresses, telephone numbers,
 311 photographs, dates of birth, and places of employment of the
 312 spouses and children, and the names and locations of schools and
 313 day care facilities attended by such children, of current or
 314 former county attorneys and assistant county attorneys be made
 315 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 316 Article I of the State Constitution. The Legislature finds that
 317 the release of such personal identifying and location
 318 information could place such persons in danger of being
 319 physically and emotionally harmed or stalked by a defendant or

16-00442-20 2020248__
 320 other person. The Legislature finds that the harm that may
 321 result from the release of such personal identifying and
 322 location information outweighs any public benefit that may be
 323 derived from the disclosure of the information.

324 Section 3. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

12-9-19

Meeting Date

248

Bill Number (if applicable)

Topic ~~MEMORANDUM~~ Public Records / County Attorneys

Amendment Barcode (if applicable)

Name LAURA YOLMANS

Job Title LEGISLATIVE COUNSEL

Address 100 S. MONROE ST

Phone 850-294-1838

Street

TAL

City

FL

State

32301

Zip

Email LYolmans@flcounties.com

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

12/9/19

Meeting Date

248

Bill Number (if applicable)

Topic Pub. Rec./county Attorneys + Abst. County Attys.

Amendment Barcode (if applicable)

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave., Main Library, 8th Fl

Phone 954-253-7320

Street

Ft. Lauderdale

FL

33301

City

State

Zip

Email dsainvil@broward.org

Speaking: For Against Information

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

Representing Broward County Bd. of County Commissioners

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)

12/9/19 Meeting Date

248 Bill Number (if applicable)

Topic Public Records County Attorneys

Amendment Barcode (if applicable)

Name RALPH LAIR

Job Title Intergovernmental Affairs Officer

Address 38283 McDonald Street

Phone 352-521-5116

Dade City FL 33525

Email r.lair@pascocountyfl.net

Speaking: For Against Information

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

Representing PASCO COUNTY BOCC

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.

APPEARANCE RECORD

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

12/9/2019

Meeting Date

248

Bill Number (if applicable)

Topic SB 248 Public Records/County Attorneys and Assistant County Attorneys

Amendment Barcode (if applicable)

Name Angela Bonds

Job Title

Address 215 s. Monroe St Suite 815

Phone 8503452277

Street

Tallahassee

FL

32303

Email abonds@deanmead.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Charlotte County

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

Lobbyist registered with Legislature: [x] 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.

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 12/9/2019 1:44:53 PM

Ends: 12/9/2019 2:38:29 PM

Length: 00:53:37

1:44:52 PM Meeting called to order
1:44:58 PM Roll call - Quorum present
1:45:12 PM Comments from chair
1:45:21 PM Tab 6 - SB 7008 - OGSR/Animal Medical Records/State College of Veterinary Medicine by Senator Diaz, presented by Senator Bean
1:46:37 PM Questions? None
1:46:43 PM Appearance? None
1:46:49 PM Debate? None
1:46:56 PM Senator Bean waives close
1:47:00 PM Roll call - SB 7008
1:47:08 PM Chair
1:47:43 PM Tab 5 - SB 7004 - OGSR/Taxpayer E-mail Addresses held by a Tax Collector by Senator Gainer
1:48:24 PM Chair
1:48:26 PM Questions? None
1:48:30 PM Appearance? None
1:48:34 PM Debate? None
1:48:35 PM Senator Gainer waives close
1:48:38 PM Roll Call - SB 7004
1:48:52 PM Tab 2 - SB 374 - Housing Discrimination by Senator Rouson
1:49:47 PM Questions?
1:50:33 PM Senator Albritton
1:52:04 PM Senator Rouson
1:52:10 PM Senator Albritton
1:52:11 PM Senator Hooper
1:52:12 PM Senator Rouson to close
1:52:40 PM Speaker Michelle M. Wilson
1:53:35 PM Chair
1:53:43 PM Zane Smith, Associate State Director, AARP Florida, waives in support
1:53:51 PM Daphnee Sainvil, Legislative Policy Director, Broward Co. Bd. of Cty. Commissioners - waives in support
1:54:00 PM Pamela Burch Fort, Fla. State Conference of NAACP, waives in support
1:54:09 PM Debate? None
1:54:17 PM Senator Rouson waives close
1:54:23 PM Roll Call - SB 374
1:54:43 PM Tab 3 - SB 726 - Florida Commission on Human Relations by Senator Rouson
1:56:40 PM Questions? None
1:56:49 PM Carolyn Johnson, Policy Director, Fl. Chamber of Commerce, waives in support
1:57:03 PM Debate?
1:57:11 PM Senator Torres
1:57:13 PM Senator Rouson
1:57:52 PM Senator Rouson waives close
1:58:07 PM Roll Call SB 726
1:58:22 PM Tab 4 - SB 830 - OGSR/Certain Personal Financial and Health Information by Senator Benacquisto
1:59:02 PM Questions? None
1:59:07 PM Appearance? None
1:59:10 PM Debate? None
1:59:12 PM Senator Benacquisto waives close
1:59:13 PM Roll Call on SB 830
2:00:00 PM Tab 1 - SB 220 - Abandoned Cemeteries by Senator Cruz
2:00:02 PM Chair Hooper turns chair over to Senator Rader
2:00:36 PM Delete All Amendment 156020 by Senator Cruz
2:02:56 PM Senator Cruz explains delete-all amendment 156020
2:02:59 PM Amendment to Amendment 181220 by Senator Hooper

2:03:22 PM Chair
2:04:16 PM Questions? None
2:04:21 PM Appearance? None
2:04:25 PM Debate?
2:04:28 PM Sen. Hooper waives close
2:04:36 PM Amendment to amendment is adopted
2:04:45 PM Back on the Delete-all amendment as amended
2:04:51 PM Debate? None
2:04:58 PM Senator Cruz to close
2:06:05 PM Chair
2:06:08 PM Objections to the amendment? None
2:06:21 PM Back on bill as amended
2:06:34 PM Jeffrey Shanks, Archaeologist, National Park Services, for information
2:09:32 PM Jeffrey Moates, Regional Director, Archaeologist, Fla. Public Archaeology Network speaking for information
2:11:44 PM Chair
2:11:46 PM Rebecca O'Sullivan, Public Archaeology Coordinator, Fla. Public Archaeology Network, speaking for information
2:14:45 PM Sarah Miller, Newton Director, Fla. Public Archaeology Network/Society Historical, speaking for information
2:17:07 PM Questions?
2:17:10 PM Senator Torres
2:17:34 PM Speaker Sarah Miller
2:18:22 PM Senator Torres
2:19:24 PM Nigel Rudolph
2:20:23 PM Nigel Rudolph, Archaeologist, FPAN, speaking in support
2:20:26 PM Karen Kirkman, Alachua County Historical Commission, speaking for information
2:24:03 PM Lauren Storch, Hillsborough County, waives in support
2:24:21 PM Senator Gibson speaking in support of this bill
2:26:35 PM Chair makes comments
2:26:36 PM Debate on bill as amended
2:26:38 PM Senator Hooper
2:26:53 PM Senator Hooper
2:28:20 PM Chair
2:29:54 PM Senator Cruz to close as amended
2:31:02 PM Senator Rouson
2:31:39 PM Senator Gibson
2:32:11 PM Roll Call - CS/SB 220
2:32:24 PM Chair
2:32:28 PM Comments made by Senator Rader
2:33:01 PM Senator Hooper
2:33:12 PM Tab 8 - SB 248 - Public Records/County Attorneys and Assistant County Attorneys by Senator Hooper
2:34:39 PM Questions? None
2:34:46 PM Appearance?
2:34:51 PM Angela Bonds, Charlotte County, waives in support
2:35:04 PM Ralph Lair, Pasco County, waives in support
2:35:09 PM Dafney Sainvil, waives in support
2:35:15 PM Lural Youmas, Florida Association of Counties, waives in support
2:35:24 PM Debate? None
2:35:28 PM Senator Hooper waives close
2:35:35 PM Roll Call - SB 248
2:35:50 PM Senator Rader turns chair back over to Senator Hooper
2:36:18 PM Senator Hooper
2:37:08 PM Tab 7 - SB 444 - Customer Service Standards for State Agencies by Senator Rader
2:37:22 PM Chair
2:37:24 PM Questions? None
2:37:29 PM Appearance cards? None
2:37:31 PM Debate? None
2:37:35 PM Senator Radar waives close
2:37:41 PM Roll call SB 444
2:38:01 PM Other Business? None
2:38:06 PM Senator Torres moves we adjourn

2:38:13 PM Any Objections? Seeing no objections the meeting is adjourned.