

CS/SB 1314 by **BI, Bradley**; (Similar to CS/H 0961) Electronic Noticing of Trust Accounts

CS/CS/SB 102 by **FP, JU, Hukill (CO-INTRODUCERS) Joyner, Latvala**; (Similar to CS/H 0313) Digital Assets

CS/SB 282 by **CJ, Hukill**; (Compare to CS/CS/H 0197) Tracking Devices or Tracking Applications

692926 PCS S RCS RC, ACJ 04/15 03:35 PM

CS/SB 240 by **TR, Brandes (CO-INTRODUCERS) Gaetz, Gibson**; (Similar to CS/H 0027) Driver Licenses and Identification Cards

SB 984 by **Braynon**; (Identical to H 0599) Exemption from Legislative Lobbying Requirements

CS/SB 1048 by **TR, Garcia**; (Compare to CS/CS/H 0921) Motor Vehicle Manufacturer Licenses

654822 PCS S RCS RC, ATD 04/15 03:36 PM
949918 PCS:A S L RCS RC, Diaz de la Portilla btw L.338 - 339: 04/15 03:36 PM
943836 A S WD RC, Diaz de la Portilla btw L.358 - 359: 04/13 05:21 PM

SB 1078 by **Sobel**; (Identical to H 4049) Lewd and Lascivious Behavior

CS/SB 524 by **BI, Soto**; (Similar to CS/CS/H 0779) Rental Agreements

671292 A S L RCS RC, Soto btw L.67 - 68: 04/15 03:38 PM

CS/CS/SB 1324 by **GO, CJ, Latvala**; (Similar to CS/H 1015) Public Records/Agency Personnel Information

120406 A S RCS RC, Latvala Delete L.32 - 332: 04/15 03:39 PM
310864 A S WD RC, Latvala Delete L.304 - 319: 04/15 03:39 PM

SB 7060 by **EP**; (Similar to H 7083) Ratification of Department of Environmental Protection Rules

SB 7062 by **EP**; (Similar to H 7081) Ratification of Department of Environmental Protection Rules

CS/CS/SB 1372 by **CA, EE, Gaetz**; (Similar to CS/CS/CS/H 1063) Government Accountability

897662 A S FAV RC, Gaetz btw L.382 - 383: 04/15 03:41 PM
287580 AA S FAV RC, Gaetz Delete L.23 - 27: 04/15 03:41 PM
381578 A S RS RC, Gaetz Delete L.408 - 649: 04/15 03:41 PM
533978 SA S L FAV RC, Joyner Delete L.408 - 744: 04/15 03:41 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Simmons, Chair
Senator Soto, Vice Chair

MEETING DATE: Wednesday, April 15, 2015
TIME: 9:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 1314 Banking and Insurance / Bradley (Similar CS/H 961)	Electronic Noticing of Trust Accounts; Authorizing a sender to post a document to a secure electronic account or website upon the authorization of a recipient; requiring a sender to provide notice of the beginning of a limitations period and authority of a recipient to amend or revoke authorization for electronic posting; establishing burdens of proof for purposes of determining whether proper notifications were provided, etc. BI 03/23/2015 Fav/CS JU 03/31/2015 Favorable RC 04/09/2015 Favorable RC 04/15/2015 Favorable RC	Favorable Yeas 12 Nays 0
2	CS/CS/SB 102 Fiscal Policy / Judiciary / Hukill (Similar CS/H 313)	Digital Assets; Creating the "Florida Fiduciary Access to Digital Assets Act"; authorizing a personal representative to have access to specified digital assets of a decedent under certain circumstances; authorizing a guardian to have access to specified digital assets of a ward under certain circumstances; providing the rights of a fiduciary relating to digital assets; providing requirements for compliance for a custodian, a personal representative, a guardian, an agent, a trustee, or another person that is entitled to receive and collect specified digital assets, etc. JU 02/03/2015 Fav/CS FP 04/02/2015 Fav/CS RC 04/15/2015 Favorable	Favorable Yeas 9 Nays 4

A proposed committee substitute for the following bill (CS/SB 282) is available:

3	CS/SB 282 Criminal Justice / Hukill (Compare CS/CS/H 197)	Tracking Devices or Tracking Applications; Prohibiting the installation of a tracking device or tracking application without a person's consent; creating a presumption that consent is revoked upon initiation of specified proceedings; providing exceptions to the prohibition on installation of tracking devices or tracking applications; providing criminal penalties, etc. CJ 03/30/2015 Fav/CS ACJ 04/08/2015 Fav/CS RC 04/15/2015 Fav/CS	Fav/CS Yeas 13 Nays 0
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COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 15, 2015, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation - Criminal and Civil Justice Appropriations			
4	CS/SB 240 Transportation / Brandes (Similar CS/H 27)	Driver Licenses and Identification Cards; Providing for the Department of Highway Safety and Motor Vehicles to accept a military identification card to meet certain requirements for issuance of an identification card or a driver license, respectively, etc. TR 03/12/2015 Fav/CS ATD 04/02/2015 Favorable RC 04/15/2015 Favorable	Favorable Yeas 12 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development Appropriations			
5	SB 984 Braynon (Identical H 599)	Exemption from Legislative Lobbying Requirements; Revising the definition of the term "expenditure"; specifying that the term does not include use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements, etc. EE 03/24/2015 Favorable GO 04/07/2015 Favorable RC 04/15/2015 Favorable	Favorable Yeas 13 Nays 0
A proposed committee substitute for the following bill (CS/SB 1048) is available:			
6	CS/SB 1048 Transportation / Garcia (Compare CS/CS/H 921)	Motor Vehicle Manufacturer Licenses; Providing that a motor vehicle dealer who receives approval of a facility from an applicant or licensee within a specified timeframe is deemed to be in full compliance with facility-related requirements; revising provisions related to an applicant or licensee who has undertaken or engaged in an audit of service-related payments or incentive payments; limiting the timeframe for the performance of such audits, etc. TR 03/26/2015 Fav/CS ATD 04/02/2015 Fav/CS RC 04/15/2015 Fav/CS	Fav/CS Yeas 12 Nays 1
With subcommittee recommendation - Transportation, Tourism, and Economic Development Appropriations			

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 15, 2015, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1078 Sobel (Identical H 4049, Compare H 4045)	Lewd and Lascivious Behavior; Repealing provisions relating to a prohibition on lewd and lascivious behavior, including a prohibition on lewd and lascivious association and cohabitation together by a man and woman who are not married to each other, etc. CJ 03/16/2015 Favorable JU 03/31/2015 Favorable RC 04/15/2015 Favorable	Favorable Yeas 11 Nays 0
8	CS/SB 524 Banking and Insurance / Soto (Similar CS/CS/H 779)	Rental Agreements; Providing that a purchaser takes title to a tenant-occupied residential property following a foreclosure sale subject to the rights of the tenant; specifying the rights of the tenant; authorizing a tenant to remain in possession of the property for 30 days following receipt of a written notice, etc. JU 03/17/2015 JU 03/24/2015 Favorable BI 04/07/2015 Fav/CS RC 04/15/2015 Fav/CS	Fav/CS Yeas 12 Nays 0
9	CS/CS/SB 1324 Governmental Oversight and Accountability / Criminal Justice / Latvala (Similar CS/H 1015)	Public Records/Agency Personnel Information; Providing exemptions from public records requirements for certain information related to active or former sworn or civilian law enforcement personnel and specified agency personnel, current and former state attorneys, assistant state attorneys, statewide prosecutors, assistant statewide prosecutors, public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsel, and assistant capital collateral regional counsel and their parents, siblings, or cohabitants; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CJ 03/30/2015 Fav/CS GO 04/07/2015 Fav/CS RC 04/15/2015 Fav/CS	Fav/CS Yeas 12 Nays 0
10	SB 7060 Environmental Preservation and Conservation (Similar H 7083)	Ratification of Department of Environmental Protection Rules; Ratifying a specified rule relating to liners and leachate collection systems for construction and demolition debris disposal facilities, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds of likely adverse impact or increase in regulatory costs, etc. RC 04/15/2015 Favorable	Favorable Yeas 13 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 15, 2015, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 7062 Environmental Preservation and Conservation (Similar H 7081)	Ratification of Department of Environmental Protection Rules; Ratifying a specified rule relating to minimum flows and levels and recovery and prevention strategies, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc.	Favorable Yeas 13 Nays 0
		RC 04/15/2015 Favorable	
12	CS/CS/SB 1372 Community Affairs / Ethics and Elections / Gaetz (Similar CS/CS/H 1063)	Government Accountability; Specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the Commissioner of Education may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; revising reporting requirements applicable to the Florida Clerks of Court Operations Corporation; expanding the types of governmental entities that are subject to lobbyist registration requirements; revising the responsibilities of the governing board of a charter school to include the establishment and maintenance of internal controls, etc.	Amendments Adopted - Temporarily Postponed
		EE 03/24/2015 Fav/CS CA 03/31/2015 Fav/CS RC 04/15/2015	

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 Rules

BILL: CS/SB 1314

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Electronic Noticing of Trust Accounts

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>
4.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1314 provides a mechanism for trustees to provide electronic notices relating to trust accounts. A trustee has a duty to keep beneficiaries of an irrevocable trust reasonably informed of the trust and its administration. Specifically, the trustee must provide beneficiaries with an accounting of the trust at specified periods, disclosure of documents related to the trust, and notice of specific events related to the administration of the trust.

The Florida Trust Code currently provides that the only permissible methods of sending notice or a document to such persons are by first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message. However, for many reasons, some beneficiaries prefer to receive, store, and access correspondence and documents through secured websites and accounts. Trustees also prefer to provide sensitive financial information through secured web accounts rather than through electronic messages that carry greater security risks. Although financial institutions commonly use secure websites for providing statements and other disclosures related to bank or credit accounts, such methods are rarely used for trust accounts due to a perceived lack of authorization within current law.

The bill authorizes a trustee to post required documents to a secure website or account if a beneficiary opts in to receiving electronic documents through a secure website or account. The bill also specifies when notice or the delivery of a document by electronic message or posting is

complete and presumed received by the intended recipient for purposes of commencing a limitations period for breach of trust claims.

II. Present Situation:

“A trust is a fiduciary relationship¹ with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.”² A trust involves three interest holders: the settlor³ who establishes the trust; the trustee⁴ who holds legal title to the property held for the benefit of the beneficiary; and lastly, the beneficiary⁵ who has an equitable interest in property held subject to the trust.

The Florida Trust Code⁶ (the “code”) requires a trustee to administer the trust “in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with [the] code,”⁷ and also imposes a duty of loyalty upon the trustee.⁸ The violation by a trustee of a duty owed to a beneficiary is a breach of trust.⁹

Disclosure and Notice of Trust Administration

To be able to enforce the trustee’s duties, the beneficiary of a trust must know of the existence of the trust and be informed about the administration of the trust:

If there were no duty to inform and report to the beneficiary, the beneficiary might never become aware of breaches of trust or might be unaware of breaches until it is too late to obtain relief. In addition, providing information to the beneficiary protects the trustee from claims being brought long after events that allegedly constituted a breach, because the statute of limitations or the doctrine of laches will prevent the beneficiary from pursuing stale claims. As a result, the duty to inform and report to the beneficiary is fundamental to the trust relationship.¹⁰

¹ *Brundage v. Bank of America*, 996 So.2d 877, 882 (Fla. 4th DCA 2008) (trustee owes a fiduciary duty to settlor/beneficiary).

² 55A FLA.JUR.2D *Trusts* ch. 1.

³ “Settlor” means a person, including a testator, who creates or contributes property to a trust. Section 736.0103(18), F.S.

⁴ “Trustee” means the original trustee and includes any additional trustee, any successor trustee, and any cotrustee. Section 736.0103(23), F.S.

⁵ “Beneficiary” means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee. Section 736.0103(4), F.S.

⁶ Chapter 736, F.S.

⁷ Section 736.0801, F.S.

⁸ Section 736.0802(1), F.S.

⁹ Section 736.1001(1), F.S.

¹⁰ Kevin D. Millard, *The Trustee’s Duty to Inform and Report Under the Uniform Trust Code*, 40 REAL PROPERTY, PROBATE AND TRUST J. 373, 375, (summer 2005)

http://www.americanbar.org/content/dam/aba/publications/real_property_trust_and_estate_law_journal/V40/02/2005_aba_rpt_e_journal_v40_no2_summer_master.pdf, (last visited Mar. 9, 2015).

Accordingly, s. 736.0813, F.S., imposes a duty on a Florida trustee to keep the qualified beneficiaries¹¹ (hereinafter “beneficiaries”) of an irrevocable trust reasonably informed of the trust and its administration. The duty includes, but is not limited to:¹²

- Notice of the existence of the irrevocable trust, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings, and applicability of the fiduciary lawyer-client privilege.
- Notice of the acceptance of the trust, the full name and address of the trustee, and the applicability of the fiduciary lawyer-client privilege.
- Disclosure of a copy of the trust instrument upon reasonable request.
- An annual accounting of the trust to each beneficiary and an accounting on termination of the trust or on change of the trustee. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.¹³
- Disclosure of relevant information about the assets and liabilities of the trust and the particulars relating to administration upon reasonable request.
- Such additional notices and disclosure requirements related to the trust administration as required by the Florida Trust Code.¹⁴

A beneficiary must bring an action for breach of trust as to any matter adequately disclosed within an accounting or any other written report of the trustee, also known as trust disclosure documents,¹⁵ within 6 months after *receiving* the trust disclosure document or a limitation notice¹⁶ from the trustee that applies to that trust disclosure document, whichever occurs later.¹⁷ A limitation notice informs the beneficiary that an action against the trustee for breach of trust based on any matter adequately disclosed in the trust disclosure document may be barred unless the action is commenced within 6 months.

The code prescribes the permissible methods of sending a document or notice for receipt by a beneficiary.

¹¹ The term “qualified beneficiary” encompasses only a limited subset of all trust beneficiaries. The class is limited to living persons who are current beneficiaries, intermediate beneficiaries, and first-line remainder beneficiaries, whether vested or contingent. Section 736.0103(16), F.S.

¹² Section 736.0813, F.S.

¹³ Sections 736.0813 and 736.08135, F.S.

¹⁴ See, e.g. Section 736.0108(6), F.S. (notice of a proposed transfer of a trust's principal place of administration); Section 736.04117(4), F.S. (notice of the trustee's exercise of the power to invade the principal of the trust); Section 736.0414(1), F.S. (notice of terminating certain minimally funded trusts); Section 736.0417(1), F.S. (notice prior to combining or dividing trusts); Section 736.0705 (notice of resignation of trustee); Section 736.0802, F.S. (disclose and provide notice of investments in funds owned or controlled by trustee; the identity of the investment instruments, and the identity and relationship to the trustee to any affiliate that owns or controls the investment instruments; and notice to beneficiaries whose share of the trust may be affected by certain legal claims); and Section 736.0902(5), F.S., (notice of the non- application of the prudent investor rule to certain transactions).

¹⁵ “Trust disclosure document” means a trust accounting or any other written report of the trustee. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter. Section 736.1008(4)(a), F.S.

¹⁶ “Limitation notice” means a written statement of the trustee that an action by a beneficiary against the trustee for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later.

¹⁷ Section 736.1008(2), F.S.

Methods of Disclosure or Notice

Current law requires that notice or sending a document to a person under the code must be accomplished “in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.”¹⁸ However, s. 736.0109, F.S., specifies that the only permissible manners of providing notice, except notice of a judicial proceeding, or sending a document to a person under the code are:

- First-class mail;
- Personal delivery;
- Delivery to the person’s last known place of residence or place of business; or
- A properly directed facsimile or other electronic message.

Notice of a judicial proceeding must be given as provided in the Florida Rules of Civil Procedure.¹⁹

The current methods of permissible notice or service of documents under the code restrict the ability of trustees to meet increasing beneficiary demands to receive information electronically. Trustees have expressed concern regarding protecting confidential information and the privacy hazards inherent in the delivery of financial information via email.²⁰ Some trustees, sensitive to these privacy concerns, deliver required documents, such as a trust account statement, to beneficiaries by emailing notice that a trust statement is available to be viewed and downloaded on a secured website or account and providing a password for the beneficiary to access the account.²¹ However, it is not clear that by using this method, although more secure than email, the trustee technically complies with the duty to provide a trust accounting under s. 736.0813, F.S., because the document itself is not delivered by email but rather delivers information on how to access the document through a secured website. The failure to provide a trust accounting may be actionable as a breach of trust under the code if a beneficiary denies receipt of statements provided by this method. Further, it is not clear that trust documents posted on a secured website have the benefit of the 6 month limitations period for matters adequately disclosed in trust disclosure documents as they are provided in a manner that may not be permissible under the code. If the limitations period does not apply, a trustee may be subject to a breach of trust claim, even if the matters were adequately disclosed in the trust document, for up to 4 years.²²

Due to the uncertainty regarding when the limitations period runs for notice or trust disclosure documents delivered by electronic message or posted on a secured website and whether attempts to provide trust disclosure documents through a secured website or account technically comply with the statutory duty to provide certain documents to a beneficiary, trustees have little incentive to respond to beneficiary requests for electronic communications. Prudent trustees that offer electronic delivery of trust disclosure documents via email or through a secured website may find it necessary to continue providing physical documents in order to comply with notice

¹⁸ Section 736.0109(1), F.S.

¹⁹ Section 736.0109(4), F.S.

²⁰ Florida Bankers Association, *Subcommittee Report on Electronic Delivery of Trust Statements*, (2015) (on file with the Senate Committee on Judiciary).

²¹ *Id.*

²² Section 736.1008(1), F.S. provides that the applicable limitations period is determined under ch. 95, F.S. That is, the normal limitations period will be the 4 year period described in s. 95.11(3), F.S.

and disclosure requirements under the code and to secure the protection of the 6 months limitations period for breach of trust claims.

III. Effect of Proposed Changes:

CS/SB 1314 authorizes a trustee to post documents that must be provided to a person under the code to a secure electronic website or account if the person provides written authorization. The website or account must allow the recipient to download or print the posted document. A document provided solely through electronic posting must be retained on the website or account for at least 4 years after the date it is received. The written authorization to provide electronic posting of documents must:

- Be limited solely to posting documents on the electronic account or website.
- Enumerate the documents that may be posted on the electronic website or account.
- Contain specific instructions for accessing the electronic website or account, including any security measures.
- Advise that a separate notice will be sent, and the manner in which it will be sent, when a document is posted to the electronic website or account.
- Advise that the authorization may be amended or revoked at any time and provide instructions to amend or revoke authorization.
- Advise that the posting of a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never access the electronic account, website, or document.

The trustee is required to send a notice to a person receiving trust documents by electronic posting, which notice may be made by any permissible method of notice under the code except electronic posting, at the following intervals:

- Each time a document is posted and the notice must identify each document that has been posted and how the person may access the document.
- Every year (the “annual notice”) to advise such persons that posting of a document commences a limitations period as short as 6 months even if the recipient never accesses the website, account, or document. The annual notice must also address the right to amend or revoke a previous authorization to post trust documents on a website or account. The bill provides the suggested form of the annual notice, which is substantially similar to the suggested form of a limitations notice provided in s. 736.1008(4)(c), F.S. The failure of a trustee to provide the annual notice within 380 days after the last notice automatically revokes the person’s authorization to post trust documents on an electronic website or account.

A document delivered by electronic posting is deemed received by the recipient on the earlier of the date that notice of the document’s posting is received or the date that the recipient accesses the document on the electronic account or website. The posting of a document to an electronic account or website is only effective if done in compliance with the requirements of this bill. The trustee has the burden of demonstrating compliance with such requirements. If a trustee provides notice or sends a document to a person by electronic message, notice or sending of the document is complete when sent and presumed received on the date on which it is sent unless the sender has actual knowledge the electronic message did not reach the recipient.

The bill does not preclude the sending of a document by other permissible means under the code nor does it affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810, F.S., or the time such records must be retained.

The bill specifically delineates that notice and service of documents in a judicial proceeding related to a trust are governed by the Florida Rules of Civil Procedure rather than the code.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Trustees may see a reduction in stationary, postage, and labor costs by providing required notices and documents electronically to qualified beneficiaries that opt in to receive electronic notices.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 736.0109 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 23, 2015:

The CS clarifies that the website or account where trust documents are posted must be secure. The CS provides that the annual notice must be provided within 380 days of the last notice.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Bradley

597-02739-15

20151314c1

1 A bill to be entitled
 2 An act relating to electronic noticing of trust
 3 accounts; amending s. 736.0109, F.S.; authorizing a
 4 sender to post a document to a secure electronic
 5 account or website upon the authorization of a
 6 recipient; providing for effective authorization for
 7 such posting; requiring a sender to provide a separate
 8 notice once a document is electronically posted;
 9 specifying when a document sent electronically is
 10 deemed received by the recipient; requiring a sender
 11 to provide notice of the beginning of a limitations
 12 period and authority of a recipient to amend or revoke
 13 authorization for electronic posting; providing a form
 14 that may be used to effectuate such notice; requiring
 15 documents posted to an electronic website to remain
 16 accessible to the recipient for a specified period;
 17 establishing burdens of proof for purposes of
 18 determining whether proper notifications were
 19 provided; specifying that electronic messages are
 20 deemed received when sent; specifying situations under
 21 which electronic messages are not deemed received;
 22 specifying that service of documents in a judicial
 23 proceeding are governed by the Florida Rules of Civil
 24 Procedure; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Present subsections (3) and (4) of section
 29 736.0109, Florida Statutes, are redesignated as subsections (5)

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30 and (6), respectively, present subsection (4) is amended, and
 31 new subsections (3) and (4) are added to that section, to read:
 32 736.0109 Methods and waiver of notice.—
 33 (3) In addition to the methods listed in subsection (1) for
 34 sending a document, a sender may post a document to a secure
 35 electronic account or website where the document can be
 36 accessed.
 37 (a) Before a document may be posted to an electronic
 38 account or website, the recipient must sign a separate written
 39 authorization solely for the purpose of authorizing the sender
 40 to post documents on the electronic account or website. The
 41 written authorization must:
 42 1. Enumerate the documents that may be posted in this
 43 manner.
 44 2. Contain specific instructions for accessing the
 45 electronic account or website, including the security procedures
 46 required to access the electronic account or website, such as a
 47 username and password.
 48 3. Advise the recipient that a separate notice will be sent
 49 when a document is posted to the electronic account or website
 50 and the manner in which the separate notice will be sent.
 51 4. Advise the recipient that the authorization to receive
 52 documents by electronic posting may be amended or revoked at any
 53 time and include specific instructions for revoking or amending
 54 the authorization, including the address designated for the
 55 purpose of receiving notice of the revocation or amendment.
 56 5. Advise the recipient that posting a document on the
 57 electronic account or website may commence a limitations period
 58 as short as 6 months even if the recipient never actually

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59 accesses the electronic account or website or the document.

60 (b) Once the recipient signs the written authorization, the
 61 sender must provide a separate notice to the recipient when a
 62 document is posted to the electronic account or website. As used
 63 in this subsection, the term "separate notice" means a notice
 64 sent to the recipient by means other than electronic posting
 65 which identifies each document posted to the electronic account
 66 or website and provides instructions for accessing the posted
 67 document. The separate notice requirement is satisfied if the
 68 recipient accesses the document on the electronic account or
 69 website.

70 (c) A document sent by electronic posting is deemed
 71 received by the recipient on the earlier of the date that the
 72 separate notice is received or the date that the recipient
 73 accesses the document on the electronic account or website.

74 (d) At least annually after a recipient signs a written
 75 authorization, a sender shall send a notice advising the
 76 recipient that posting a document on the electronic account or
 77 website may commence a limitations period as short as 6 months
 78 even if the recipient never accesses the electronic account or
 79 website or the document and that the authorization to receive
 80 documents by electronic posting may be amended or revoked at any
 81 time. This notice must be given by means other than electronic
 82 posting and may not be accompanied by any other written
 83 communication. Failure to provide such notice within 380 days
 84 after the last notice is deemed to automatically revoke the
 85 authorization to receive documents in the manner permitted under
 86 this subsection 380 days after the last notice is sent.

87 (e) The notice required in paragraph (d) may be in

597-02739-15

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88 substantially the following form: "You have authorized receipt
 89 of documents through posting to an electronic account or website
 90 where the documents can be accessed. This notice is being sent
 91 to advise you that a limitations period, which may be as short
 92 as 6 months, may be running as to matters disclosed in a trust
 93 accounting or other written report of a trustee posted to the
 94 electronic account or website even if you never actually access
 95 the electronic account or website or the documents. You may
 96 amend or revoke the authorization to receive documents by
 97 electronic posting at any time. If you have any questions,
 98 please consult your attorney."

99 (f) A sender may rely on the recipient's authorization
 100 until the recipient amends or revokes the authorization by
 101 sending a notice to the address designated for that purpose in
 102 the authorization. The recipient, at any time, may amend or
 103 revoke an authorization to have documents posted on the
 104 electronic account or website.

105 (g) A document provided to a recipient solely through
 106 electronic posting must remain accessible to the recipient on
 107 the electronic account or website for at least 4 years after the
 108 date that the document is deemed received by the recipient. The
 109 electronic account or website must allow the recipient to
 110 download or print the document. This subsection does not affect
 111 or alter the duties of a trustee to keep clear, distinct, and
 112 accurate records pursuant to s. 736.0810 or affect or alter the
 113 time periods for which the trustee must maintain those records.

114 (h) To be effective, the posting of a document to an
 115 electronic account or website must be done in accordance with
 116 this subsection. The sender has the burden of establishing

597-02739-15

20151314c1

117 compliance with this subsection.

118 (i) This subsection does not preclude the sending of a
119 document by other means.

120 (4) Notice to a person under this code, or the sending of a
121 document to a person under this code by electronic message, is
122 complete when the document is sent.

123 (a) An electronic message is presumed received on the date
124 that the message is sent.

125 (b) If the sender has knowledge that an electronic message
126 did not reach the recipient, the electronic message is deemed to
127 have not been received. The sender has the burden to prove that
128 another copy of the notice or document was sent by electronic
129 message or by other means authorized under this section.

130 (6)(4) Notice and service of documents in of a judicial
131 proceeding are governed by must be given as provided in the
132 Florida Rules of Civil Procedure.

133 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

1314
Bill Number (if applicable)

Topic Electronic Notice of Trust Accounts

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

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City State Zip

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Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 102

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; and Senator Hukill and others

SUBJECT: Digital Assets

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 102 is a state adaptation of the Uniform Fiduciary Access to Digital Assets Act. The model law was developed by the Uniform Law Commission which is also known as the National Conference of Commissioners on Uniform State Laws. The bill vests personal representatives of a decedent, guardians, agents under a power of attorney, and trustees with the ability to access the digital assets of an account holder as if these fiduciaries were the account holder. Digital assets include electronic communications and records such as emails, text messages, online photographs, documents stored on the cloud, electronic bank statements, and other electronic communications or records.

The bill expressly states that the fiduciaries are authorized users for purposes of criminal laws that would otherwise prohibit the unauthorized access to electronic accounts. For purposes of privacy laws prohibiting email service providers and similar entities from disclosing an account holder's records without the account holder's consent, the bill provides that the fiduciaries are deemed to have the lawful consent of the account holders.

II. Present Situation:

Technology has dramatically transformed how people communicate, receive and store information, and transact business. Before the Internet was developed, most information and correspondence existed in tangible forms. The news was printed on paper and delivered by the paperboy, correspondence was delivered by the postal carrier to mailboxes, and music was

played from vinyl records. To retain items, photographs were glued into photo albums and correspondence was filed in metal filing cabinets.¹ When someone died or became incapacitated, most of his or her personal information could be located by a family member, personal representative, or guardian who sifted through the paper records in the person's home. Incoming mail would eventually divulge where the person banked and what bills needed to be paid. The quest to identify and access someone's assets, however, is changing with the advent of digital communications.

Many assets that once existed in a tangible form are being replaced by digital assets² that are intangible and not readily discoverable or accessible. Substantial amounts of valuable electronic data and digital assets are acquired and stored in cell phones, laptops, personal computers, online accounts, and other devices.³ Accordingly, a family member or personal representative often faces substantial challenges when trying to identify, locate, or access the online accounts and digital assets of a deceased or incapacitated person. One recent report stated that millions of Internet accounts "belong" to deceased people.⁴

Upon an account holder's death or incapacity, how does someone in a fiduciary⁵ relationship identify and locate that person's digital assets? Who then has control or ownership? How is an account accessed when no one has the decedent's password? Does the original terms-of-service agreement control whether a successor may gain access to an account?

Resolution of these legal issues is pitting the fiduciary's duty to identify and access the digital assets against the Internet service provider's duty to protect the original account holder's privacy interest and not illegally divulge information that could be a violation of state and federal computer security laws. Few laws exist that address the rights that fiduciaries have over digital assets.⁶ An additional barrier exists in the conditions of the terms-of-service agreement that the original account holder agreed to when initiating a contract with the service provider.

¹ The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Fiduciary Access to Digital Assets*, available at [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Fiduciary Access to Digital Assets](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Fiduciary+Access+to+Digital+Assets) (last visited Mar. 27, 2015).

² Some examples of digital assets are e-mail, photos, projects, online bank accounts, personal records, digital music, entertainment, presentations, domain names, intellectual property, and client lists. The assets are generally important because of their sentimental or financial value.

³ James D. Lamm, *Digital Passing: Estate Planning for Passwords and Digital Property*, *Video Clip: Family Wants Access to Son's Digital Data After Death* (Sept. 10, 2014), available at <http://www.digitalpassing.com/2014/09/10/video-clip-family-access-sons-digital-data-death/> (last visited Mar. 27, 2015).

⁴ The Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Enactment of Chapter 740, Florida Statutes* (2014), available at [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/1A94028AE74D00F385257D4D00639349/\\$FILE/9_15_14_White%20Paper%20Proposed%20Enactment.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/1A94028AE74D00F385257D4D00639349/$FILE/9_15_14_White%20Paper%20Proposed%20Enactment.pdf?OpenElement) (last visited Mar. 27, 2015).

⁵ A fiduciary is defined as someone who owes to another person a duty to act in good faith and trust. BLACK'S LAW DICTIONARY (9th ed. 2009).

⁶ The National Conference of Commissioners on Uniform State Laws, *Uniform Fiduciary Access to Digital Assets Act* (June 6, 2014) available at http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014am_ufadaa_draft.pdf (last visited Mar. 27 2015).

Criminal Laws

Federal Law

Federal and state laws prohibit the unauthorized access of both computer systems and certain types of protected data. The most relevant federal laws, passed in 1986, are the Stored Communications Act⁷ and the Computer Fraud and Abuse Act.⁸ The Stored Communications Act, which is part of the Electronic Communications Privacy Act,⁹ establishes privacy rights and prohibits certain electronic communication services or remote computing services from knowingly divulging the contents of certain electronic communications and files.¹⁰ These privacy protections are viewed by some as being substantial barriers for family members and fiduciaries who seek to access the contents of a deceased or incapacitated user's online accounts. The service providers see them as restrictions on their ability to disclose electronic communications to anyone, unless certain exceptions are met. The service providers reasoning is that, if the Stored Communications Act applies, the online account service provider is prohibited by law from disclosing the contents of the communications and files.¹¹

The Computer Fraud and Abuse Act is a computer security law that prohibits conduct that victimizes computer systems. The law is designed to protect computers in which there is a federal interest and shields them from certain threats and forms of espionage and from being corruptly used as vehicles to commit fraud.¹² The law imposes penalties for the unauthorized access of stored data, devices, and computer hardware.¹³ The U.S. Department of Justice has stated that the Computer Fraud and Abuse Act is broad enough in scope to permit the federal government to prosecute someone if the person exceeds his or her authorized access by violating the access terms of a web site's terms-of-service agreement or usage policies.¹⁴

State Law

Two chapters in the *Florida Statutes* address computer related crimes and the security of communications and are modeled after the Stored Communications Act. Chapter 815, F.S., is the "Florida Computer Crimes Act" and ch. 934, F.S., is entitled "Security of Communications; Surveillance." Neither chapter addresses the ability of a fiduciary to legally access, duplicate, or control digital assets.¹⁵

⁷ 18 U.S.C. s. 2701 *et seq.*

⁸ 18 U.S.C. s. 1030 *et seq.*

⁹ 18 U.S.C. s. 2510 *et seq.*

¹⁰ James D. Lamm, Digital Passing: *Your Client is Six Feet Under, But His Data is in the Cloud*, Nov. 2014 available at <http://www.digitalpassing.com/wordpress/wp-content/uploads/2013/02/James-Lamm-Digital-Death-1-17-2013.pdf> (last visited Mar. 27, 2015).

¹¹ *Id.*

¹² Charles Doyle, Congressional Research Service, *Cybercrime: A Sketch of 18 U.S.C. 1030 and Related Federal Criminal Laws*, RS20830 (Oct. 15, 2014).

¹³ William Bissett and David Kauffman, *Surf the Evolving Web of Laws Affecting Digital Assets*, 41 Estate Planning No. 4 (Apr. 2014), available at <http://www.inknowvision.com/newsletters/July2014.pdf> (last visited Mar. 27, 2015).

¹⁴ Lamm, *supra* note 10, at 10.

¹⁵ *Supra* note 4.

Terms-of-Service Agreements

Terms-of-service agreements, the conditions controlling the relationship between the account holder and the service provider, are not uniform among Internet service providers. While some Internet service providers publish explicit policies detailing what will occur to digital assets when an individual dies, other providers do not. Some providers' policies state that upon the death of the account holder, the account will terminate, thereby prohibiting access to the account by anyone. Providers often publish their policies in the terms-of-service agreements, but the terms are frequently ignored as readers quickly move past the language to progress to the end of the document.

Model Uniform Law

Since 2007, nine states have enacted varying forms of laws aimed to give fiduciaries access to decedents' digital assets. Believing that legislation was needed to ensure that account holders or their guardians retain control of digital property, the Uniform Law Commission developed and adopted the Uniform Fiduciary Access to Digital Assets Act in July, 2014, to address these issues.¹⁶ The Real Property, Probate and Trust Law Section (RPPTL) of The Florida Bar has modified the uniform law and drafted Florida specific legislation to enable fiduciaries to access the digital assets of decedents, wards, principals, and settlors of a trust who are or were, prior to death, residents of Florida.¹⁷

III. Effect of Proposed Changes:

Purpose (Sections 1 & 2)

The bill creates the "Florida Fiduciary Access to Digital Assets Act." According to the RPPTL of The Florida Bar, the goal of the act is two-fold:

- To remove barriers that impede a fiduciary's ability to access electronic communications and records; and
- Leave unchanged any existing law governing fiduciary, probate, trust, banking, security, and agency law.¹⁸

Limited Application

According to the RPPTL, the act is limited in its scope and applies only to fiduciaries who are already bound to act in compliance with their fiduciary duties and powers.¹⁹ The act does not extend to family members or other people who seek access to the digital assets unless they are

¹⁶ According to its website, the Uniform Law Commission was established in 1892 and is made up of lawyers who are appointed by state governments. Its purpose is to research, draft, and promote the enactment of non-partisan uniform state legislation. The commission began meeting in 2012 to develop the Uniform Fiduciary Access to Digital Assets Act. Available at [http://www.uniformlawcommission.com/Narrative.aspx?title=About the ULC](http://www.uniformlawcommission.com/Narrative.aspx?title=About%20the%20ULC) (last visited Mar. 27, 2015).

¹⁷ NCSL, *Access to Digital Assets of Decedents: Overview*, (Nov. 11, 2014) available at <http://www.ncsl.org/research/telecommunications-and-information-technology/access-to-digital-assets-of-decedents.aspx> (last visited Mar. 26, 2015).

¹⁸ *Supra* note 4.

¹⁹ *Id.*

also fiduciaries. Moreover, the ability of a fiduciary to access a digital asset does not entitle the fiduciary to own the asset or make transactions with the asset.

The act is further limited by the definition of “digital assets.” The act’s only application is to an electronic record, which includes electronic communications, and does not apply to the underlying asset or liability unless the asset or liability is itself an electronic record.

Definitions (Section 3)

The bill creates s. 740.101, F.S., to define 24 terms used in the act. The majority of those terms are found in the Florida Probate Code and the Florida Powers of Attorney Act, while others are adapted from federal statutes or the Uniform Fiduciary Access to Digital Assets Act.²⁰ Some of the most frequently used terms in this act are listed below.

An “account holder” is defined as a person who has entered into a terms-of-service agreement with a custodian or a fiduciary for that person. The term also includes a deceased person who entered into the agreement during the person’s lifetime. This definition allows the fiduciary to step into the shoes of the original account holder.

“Catalogue of electronic communications” means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication, and the electronic address of the person. In lay terms, this is considered to be what is on the “outside of an envelope.”

“Content of an electronic communication” is defined to mean information concerning the substance or meaning of the communication which:

- Has been sent or received by the account holder;
- Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and
- Is not readily accessible to the public.

In lay terms, this is generally understood to be the “inside of an envelope” or the subject line of an e-mail, the body of an e-mail or attachment, or the body of other types of electronic communications that are protect by the Stored Communications Act.²¹

A “custodian” is defined as a person that carries, maintains, processes, receives, or stores a digital asset of an account holder.

²⁰ *Id.* at 4-7.

²¹ According to James Lamm, an expert in this area of law, the Stored Communications Act does not protect the content of all electronic communications, and the Stored Communications Act does not protect all records held in electronic storage by storage providers. The Stored Communications Act protects the content of an electronic communication only if the content is held in electronic storage by a service provider, the service provider holding the content provides an electronic communication service or remote computing service to the public, and access to the content is restricted in a manner so that it is not completely public. *See supra* note 10 at 13.

A “digital asset” is defined as an electronic record but does not include the underlying asset or liability unless the asset or liability is an electronic record.

“Electronic communication” has the same meaning as that provided in 18 U.S.C. s. 2510(12). It means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. It does not include any wire or oral communication; any communication made through a tone-only paging device; any communication from a tracking device²²; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

“Electronic communication service” means a custodian that provides to an account holder the ability to send or receive an electronic communication. An example of this would be Internet service providers.

A “remote computing service” means a custodian that provides to an account holder computer processing services or the storage of digital assets by means of an electronic communications system.²³

Four Types of Fiduciaries Covered (Sections 4-7)

Under the bill, a fiduciary who is authorized to access another’s digital assets must be a personal representative of a decedent, a guardian of a ward, an agent for a principal under a power of attorney, or a trustee of a trust. The authority applies whether the fiduciary is the original, additional, or successor fiduciary.

In essence, the bill provides that the fiduciary steps into the shoes of the person he or she is representing through this grant of authority to manage their digital assets.

Authority of a Personal Representative Over a Decedent’s Digital Assets (Section 4, creating s. 740.201, F.S.)

Unless the court or will of the decedent provides differently, a personal representative has the right to access the content of an electronic communication that the custodian is permitted to disclose under federal law, the catalogue of electronic communications sent or received by the decedent, and any other digital asset in which the decedent had a right or interest at the time of death.

Authority of a Guardian Over a Ward’s Digital Assets (Section 5, creating s. 740.301, F.S.)

The default position for a guardian is the opposite of that of a personal representative. The guardian has no right of access unless a court rules otherwise. If the court determines, after a hearing, to grant access to the guardian, the guardian has the right to access the same three

²² A tracking device is an electronic or mechanical device that permits the tracking of a person or object. 18 U.S.C. s. 3117(b).

²³ An electronic communications system is any service that provides users the ability to send or receive wire or electronic communications. 18 U.S.C. s. 2510(14).

categories discussed above involving the content, catalogue, and other digital assets pertaining to the ward.

Authority of an Agent Over a Principal's Digital Assets (Section 6, creating s. 740.401, F.S.)

The agent receives his or her authority over a principal's assets to the extent the principal expressly authorizes that grant through a power of attorney. If the authority is given, the agent has the right of access, to the extent provided, to the content of an electronic communication that the custodian is permitted to disclose under federal law. However, this provision is limited by s. 740.601(2), F.S., which is created by the bill. Section 740.601(2), F.S., allows an account holder, after June 30, 2015, to limit a fiduciary's access by an affirmative act separate from his or her assent to other provisions of the terms-of-service agreement. An agent also has the right to access the catalogue of electronic communications sent or received by the principal and any other digital asset in which the principal has a right or interest, unless otherwise established by a power of attorney or court order.

Control by a Trustee of Digital Assets (Section 7, creating 740.501, F.S.)

Section 7 of the bill, regarding the control of digital assets by a trustee, is structured slightly different than the provisions relating to other types of fiduciaries. The bill makes distinctions between a trustee who is an original account holder and a trustee who is not an original account holder.

Unless it is otherwise provided by the court or the terms of the trust:

- A trustee or a successor of a trustee who is an original account holder has the right to access each digital asset held in trust, including any catalogue of electronic communications sent or received and the content of an electronic communication; or
- A trustee or successor of a trustee who is not an original account holder has the right to access the content of the settlor's electronic communications that the custodian is permitted to disclose under federal law, the catalogue of electronic communications, and any other digital asset in which the account holder of any successor account holder has a right of interest.

These provisions are also limited by s. 740.601(2), F.S., which allows an account holder, after June 30, 2015, to limit a fiduciary's access by an affirmative act separate from his or her assent to other provisions of the terms-of-service agreement.

A Fiduciary's Access and Authority Over the Digital Assets (Section 8)

The bill creates s. 740.601(1), F.S., to establish the fiduciary's access to, and authority over, the digital assets of the account holder. The fiduciary remains subject to the duties and obligations of existing law and is liable if a breach of those duties occurs. If an asset was illegally obtained by the account holder, the fiduciary does not have any power over that asset.²⁴

²⁴ *Supra* note 4 at 9-10.

The section provides that a fiduciary that is an account holder or has the right to access a digital asset:

- May take any action regarding the digital asset to the extent the account holder had that authority, subject to terms-of-service agreement and copyright laws;
- Has, for the purpose of privacy laws, the consent of the account holder for the custodian to divulge the content of an electronic communication; and
- Is an authorized user under applicable computer fraud and unauthorized access laws. By defining the fiduciary as an authorized user, this section clarifies that the fiduciary is legally authorized to access the digital information and is not in violation of the federal or state laws prohibiting unauthorized access.²⁵

Terms-of-Service Agreements and Access to Tangible Personal Property (Section 8)

However s. 740.601(2), F.S., addresses limits on a fiduciary's access. If a terms-of-service agreement limits a fiduciary's access to a digital asset of an account holder, the bill declares the provision as against the public policy of the state unless the account holder agrees, after June 30, 2015, to limit a fiduciary's access by an affirmative act separate from his or her assent to other provisions of the terms-of-service agreement. Thus, under the bill, account holders effectively consent to the disclosure of their digital assets to a fiduciary unless they affirmatively act to opt out of disclosing their digital assets. This section also provides that a fiduciary's access to digital assets does not violate the terms-of-service agreement even if the agreement requires notice of a change in the account holder's status.

Section 740.601(3), F.S., addresses choice-of-law provisions in terms-of-service agreements by declaring that a choice-of-law provision is unenforceable if the provision designates a law that limits a fiduciary's access to a digital asset.

Section 740.601(4), F.S., provides that the fiduciary has the right to access the decedent's, ward's, principal's, or settlor's tangible personal property, such as a computer or cell phone, that receives, stores, processes, or sends digital assets and the digital assets stored on the device. The fiduciary is an authorized user for purposes of applicable computer fraud and unauthorized access laws.

Compliance (Sections 9 & 10)

Section 740.701, F.S., specifies procedures for a fiduciary to request access to, control of, or a copy of an account holder's digital assets, and requires the custodian comply with the fiduciary's request if:

- A personal representative having the right of access submits with the request a certified copy of the letters of administration or other specified document;
- A guardian having the right of access submits an accompanying certified copy of letters of plenary guardianship or a court order giving the guardian authority over the digital asset;
- An agent having the right of access submits with the request an original or copy of the power of attorney and a certification of the agent, under penalty of perjury, that the power of attorney is in effect;

²⁵ *Id* at 10.

- A trustee having the right of access submits a request accompanied by a certified copy of the trust instrument or a certification of trust authorizing the trustee to exercise authority over the digital asset; or
- A person entitled to receive and collect specified digital assets submits a request accompanied by a certified copy of an order of summary administration.

The custodian is required to comply with a request within 60 days after receipt of the request. If the custodian fails to comply, the fiduciary seek a court for an order directing compliance. A custodian who relies on a certification of trust and does not know that certain representations in the trust or amendments are incorrect is not liable for acting in reliance on those documents. However, if the custodian demands additional documentation regarding the trust or amendments, he or she is liable for damages if a court determines that the custodian did not act in good faith when demanding the trust instrument. This section does not limit the right of a person to obtain a copy of a trust instrument in a judicial proceeding concerning the trust.

As provided in s. 740.801, F.S., a custodian, its officers, employees and agents are immune from liability if it acts in good faith in compliance with the bill.

Electronic Signatures in Global and National Commerce Act (Section 11)

Section 740.901, F.S., establishes the relationship between this act and the Electronic Signatures in Global and National Commerce Act, noting where this act does and does not modify the federal law.

Application of the Bill (Section 12)

Section 740.911, F.S., provides that the power granted by the act to personal representatives, guardians, trustees, and agents applies to these fiduciaries regardless of whether their authority arose on, before, or after July 1, 2015, the effective date of the bill.²⁶ Additionally, the bill does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Effective Date (Section 13)

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

²⁶ By allowing the bill to apply retroactively to the digital assets of individuals who died or became incapacitated before the bill takes effect, the bill effectively assumes that given the choice, these individuals would not have acted to restrict access to their digital assets.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The federal preemption doctrine is a principle of law which holds that federal laws take precedence over state laws, and as such, states may not enact laws that are inconsistent with the federal law. Under the Electronic Communications Privacy Act, a service provider, with few exceptions, may not divulge the contents of a communication without the “lawful consent” of the originator, addressee, intended recipient or the subscriber.²⁷ There is no case law directly on point which explains whether a state statute can deem that a decedent, settlor, principal, or ward lawfully consents to the release of his or her communications to a fiduciary. Additionally, committee staff is not aware of any case law indicating whether a state statute can define who is an authorized user of an account for purposes of federal laws that prohibit the unauthorized access to certain electronic data. Thus, arguments exist that federal law preempts the access to digital assets authorized by the bill. However, fiduciaries are generally understood to stand in the shoes of those they represent and this bill seems consistent with the traditional functions of fiduciaries.

Notwithstanding the foregoing, the bill, because of its word choice, arguably might not conflict with federal law at all. Specifically, the bill provides fiduciaries with access to an account holder’s electronic communication *if* authorized by federal law. Thus, the bill could be read to reserve to the courts the duty of defining what access is authorized under federal law.

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

None.

B. Private Sector Impact:

This bill may help fiduciaries identify assets and bank accounts belonging to those who have died or become incapacitated. The custodians of digital assets, such as email service providers, however, will incur costs in reviewing requests for access to digital assets and then making those assets available

²⁷ 18 U.S.C. 2702(b)(3).

C. **Government Sector Impact:**

The fiscal impact on the courts indeterminate. However, the courts will likely see an increase in workload due to requests for access to electronic records and proceedings relating to conduct allegedly undertaken by custodians acting in bad faith.²⁸

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 740.001, 740.101, 740.201, 740.301, 740.401, 740.501, 740.601, 740.701, 740.801, 740.901, and 740.911.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Fiscal Policy on April 2, 2015:

The CS adds a reference to 47 U.S.C. s. 222, which addresses telecommunications carriers and privacy of their customer information, as a limitation on what a custodian's may disclose of the content of an electronic communication to a personal representative, guardian, agent, or trustee.

CS by Judiciary on February 3, 2015:

The majority of the changes to the committee substitute were stylistic changes, not substantive changes.

The definition of "content of an electronic communication" was revised to include information which has been sent or received by the account holder and is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public.

The definition of "electronic communication" was modified to mirror the definition in 18 U.S.C. s. 2510(12) which is discussed above in the Effect of Proposed Changes section.

The definition of a "remote computing service" is changed to clarify that it means a custodian that provides computer processing services to an account holder, not the public. In sections 4, 5, 6, and 7, which establish the authority of the fiduciaries over the digital

²⁸ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 102*, (February 10, 2015) (on file with the Senate Fiscal Policy Committee).

assets of the decedent, guardian, agent, and trust, language is simplified to reflect the revised definition of electronic communication from the U.S. Code.

B. Amendments:

None.

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

By the Committees on Fiscal Policy; and Judiciary; and Senators
Hukill, Joyner, and Latvala

594-03400-15

2015102c2

1 A bill to be entitled
2 An act relating to digital assets; providing a
3 directive to the Division of Law Revision and
4 Information; creating s. 740.001, F.S.; providing a
5 short title; creating s. 740.101, F.S.; defining
6 terms; creating s. 740.201, F.S.; authorizing a
7 personal representative to have access to specified
8 digital assets of a decedent under certain
9 circumstances; creating s. 740.301, F.S.; authorizing
10 a guardian to have access to specified digital assets
11 of a ward under certain circumstances; creating s.
12 740.401, F.S.; authorizing an agent to have access to
13 specified digital assets of a principal under certain
14 circumstances; creating s. 740.501, F.S.; authorizing
15 a trustee to have access to specified digital assets
16 held in trust under certain circumstances; creating s.
17 740.601, F.S.; providing the rights of a fiduciary
18 relating to digital assets; providing that specified
19 provisions in a terms of service agreement are
20 unenforceable or void as against the public policy of
21 this state under certain circumstances; creating s.
22 740.701, F.S.; providing requirements for compliance
23 for a custodian, a personal representative, a
24 guardian, an agent, a trustee, or another person that
25 is entitled to receive and collect specified digital
26 assets; providing for damages if a demand for the
27 trust instrument is not made in good faith by a
28 custodian; providing applicability; creating s.
29 740.801, F.S.; providing immunity for a custodian and

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30 its officers, employees, and agents for any action
31 done in good faith and in compliance with ch. 740,
32 F.S.; creating s. 740.901, F.S.; clarifying the
33 relationship of ch. 740, F.S., to the Electronic
34 Signatures in Global and National Commerce Act;
35 creating s. 740.911, F.S.; providing applicability;
36 providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. The Division of Law Revision and Information is
41 directed to create chapter 740, Florida Statutes, consisting of
42 ss. 740.001-740.911, Florida Statutes, to be entitled "Fiduciary
43 Access to Digital Assets."

44 Section 2. Section 740.001, Florida Statutes, is created to
45 read:

46 740.001 Short title.—This chapter may be cited as the
47 "Florida Fiduciary Access to Digital Assets Act."

48 Section 3. Section 740.101, Florida Statutes, is created to
49 read:

50 740.101 Definitions.—As used in this chapter, the term:

51 (1) "Account holder" means a person that has entered into a
52 terms-of-service agreement with a custodian or a fiduciary for
53 such person. The term includes a deceased individual who entered
54 into the agreement during the individual's lifetime.

55 (2) "Agent" means a person that is granted authority to act
56 for a principal under a durable or nondurable power of attorney,
57 whether denominated an agent, an attorney in fact, or otherwise.
58 The term includes an original agent, a co-agent, and a successor

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59 agent.

60 (3) "Carry" means to engage in the transmission of
61 electronic communications.

62 (4) "Catalogue of electronic communications" means
63 information that identifies each person with which an account
64 holder has had an electronic communication, the time and date of
65 the communication, and the electronic address of the person.

66 (5) "Content of an electronic communication" means
67 information concerning the substance or meaning of the
68 communication which:

69 (a) Has been sent or received by the account holder;

70 (b) Is in electronic storage by a custodian providing an
71 electronic communication service to the public or is carried or
72 maintained by a custodian providing a remote computing service
73 to the public; and

74 (c) Is not readily accessible to the public.

75 (6) "Court" means a circuit court of this state.

76 (7) "Custodian" means a person that carries, maintains,
77 processes, receives, or stores a digital asset of an account
78 holder.

79 (8) "Digital asset" means an electronic record. The term
80 does not include an underlying asset or liability to which an
81 electronic record refers, unless the asset or liability is
82 itself an electronic record.

83 (9) "Electronic" means technology having electrical,
84 digital, magnetic, wireless, optical, electromagnetic, or
85 similar capabilities.

86 (10) "Electronic communication" has the same meaning as
87 provided in 18 U.S.C. s. 2510(12).

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88 (11) "Electronic communication service" means a custodian
89 that provides to an account holder the ability to send or
90 receive an electronic communication.

91 (12) "Fiduciary" means a person that is an original,
92 additional, or successor personal representative, guardian,
93 agent, or trustee.

94 (13) "Guardian" means a person who is appointed by the
95 court as guardian of the property of a minor or an incapacitated
96 individual. The term includes a person appointed by the court as
97 an emergency temporary guardian of the property.

98 (14) "Information" means data, text, images, videos,
99 sounds, codes, computer programs, software, databases, or the
100 like.

101 (15) "Person" means an individual, estate, trust, business
102 or nonprofit entity, public corporation, government or
103 governmental subdivision, agency, or instrumentality, or other
104 legal entity.

105 (16) "Personal representative" means the fiduciary
106 appointed by the court to administer the estate of a deceased
107 individual pursuant to letters of administration or an order
108 appointing a curator or administrator ad litem for the estate.

109 (17) "Power of attorney" means a record that grants an
110 agent authority to act in the place of a principal pursuant to
111 chapter 709.

112 (18) "Principal" means an individual who grants authority
113 to an agent in a power of attorney.

114 (19) "Record" means information that is inscribed on a
115 tangible medium or that is stored in an electronic or other
116 medium and is retrievable in perceivable form.

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117 (20) "Remote computing service" means a custodian that
 118 provides to an account holder computer processing services or
 119 the storage of digital assets by means of an electronic
 120 communications system as defined in 18 U.S.C. s. 2510(14).

121 (21) "Terms-of-service agreement" means an agreement that
 122 controls the relationship between an account holder and a
 123 custodian.

124 (22) "Trustee" means a fiduciary that holds legal title to
 125 a digital asset pursuant to an agreement, declaration, or trust
 126 instrument that creates a beneficial interest in the settlor or
 127 others.

128 (23) "Ward" means an individual for whom a guardian has
 129 been appointed.

130 (24) "Will" means an instrument admitted to probate,
 131 including a codicil, executed by an individual in the manner
 132 prescribed by the Florida Probate Code, which disposes of the
 133 individual's property on or after his or her death. The term
 134 includes an instrument that merely appoints a personal
 135 representative or revokes or revises another will.

136 Section 4. Section 740.201, Florida Statutes, is created to
 137 read:

138 740.201 Authority of personal representative over digital
 139 assets of a decedent.—Subject to s. 740.601(2) and unless
 140 otherwise provided by the court or the will of a decedent, a
 141 personal representative has the right to access:

142 (1) The content of an electronic communication that the
 143 custodian is permitted to disclose under the Electronic
 144 Communications Privacy Act, 18 U.S.C. s. 2702(b) or 47 U.S.C. s.
 145 222;

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146 (2) The catalogue of electronic communications sent or
 147 received by the decedent; and

148 (3) Any other digital asset in which the decedent had a
 149 right or interest at his or her death.

150 Section 5. Section 740.301, Florida Statutes, is created to
 151 read:

152 740.301 Authority of guardian over digital assets of a
 153 ward.—The court, after an opportunity for hearing, may grant a
 154 guardian the right to access:

155 (1) The content of an electronic communication that the
 156 custodian is permitted to disclose under the Electronic
 157 Communications Privacy Act, 18 U.S.C. s. 2702(b) or 47 U.S.C. s.
 158 222;

159 (2) The catalogue of electronic communications sent or
 160 received by the ward; and

161 (3) Any other digital asset in which the ward has a right
 162 or interest.

163 Section 6. Section 740.401, Florida Statutes, is created to
 164 read:

165 740.401 Control by agent of digital assets.—

166 (1) To the extent that a power of attorney expressly grants
 167 an agent authority over the content of an electronic
 168 communication of the principal, and subject to s. 740.601(2),
 169 the agent has the right to access the content of an electronic
 170 communication that the custodian is permitted to disclose under
 171 the Electronic Communications Privacy Act, 18 U.S.C. s. 2702(b)
 172 or 47 U.S.C. s. 222.

173 (2) Except as provided in subsection (1) and unless
 174 otherwise provided by a power of attorney or a court order, an

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175 agent has the right to access:

176 (a) The catalogue of electronic communications sent or
177 received by the principal; and

178 (b) Any other digital asset in which the principal has a
179 right or interest.

180 Section 7. Section 740.501, Florida Statutes, is created to
181 read:

182 740.501 Control by trustee of digital assets.—Subject to s.
183 740.601(2) and unless otherwise provided by the court or the
184 terms of a trust:

185 (1) A trustee or a successor of a trustee who is an
186 original account holder has the right to access each digital
187 asset held in trust, including any catalogue of electronic
188 communications sent or received and the content of an electronic
189 communication; or

190 (2) A trustee or a successor of a trustee who is not an
191 original account holder has the right to access the following
192 digital assets held in trust:

193 (a) The catalogue of electronic communications sent or
194 received by the account holder;

195 (b) The content of an electronic communication that the
196 custodian is permitted to disclose under the Electronic
197 Communications Privacy Act, 18 U.S.C. s. 2702(b) or 47 U.S.C. s.
198 222; and

199 (c) Any other digital asset in which the account holder or
200 any successor account holder has a right or interest.

201 Section 8. Section 740.601, Florida Statutes, is created to
202 read:

203 740.601 Fiduciary access and authority.—

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204 (1) A fiduciary that is an account holder or that has the
205 right under this chapter to access a digital asset of an account
206 holder:

207 (a) May take any action concerning the digital asset to the
208 extent of the account holder's authority and the fiduciary's
209 powers under the laws of this state, subject to the terms-of-
210 service agreement and copyright or other applicable law;

211 (b) Has, for the purpose of applicable electronic privacy
212 laws, the lawful consent of the account holder for the custodian
213 to divulge the content of an electronic communication to the
214 fiduciary; and

215 (c) Is an authorized user under applicable computer fraud
216 and unauthorized access laws.

217 (2) Unless an account holder, after June 30, 2015, agrees,
218 by an affirmative act separate from the account holder's assent
219 to other provisions of the terms of the service agreement, to a
220 provision in the service agreement which limits a fiduciary's
221 access to a digital asset of the account holder:

222 (a) The provision is void as against the public policy of
223 this state; and

224 (b) The fiduciary's access under this chapter to a digital
225 asset does not violate the terms of the service agreement even
226 if the agreement requires notice of a change in the account
227 holder's status.

228 (3) A choice-of-law provision in a terms-of-service
229 agreement is unenforceable against a fiduciary acting under this
230 chapter to the extent the provision designates a law that
231 enforces a limitation on a fiduciary's access to a digital asset
232 which is void under subsection (2).

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233 (4) As to tangible personal property capable of receiving,
 234 storing, processing, or sending a digital asset, a fiduciary
 235 with authority over the property of a decedent, ward, principal,
 236 or settlor has the right to access the property and any digital
 237 asset stored in it and is an authorized user for purposes of any
 238 applicable computer fraud and unauthorized access laws,
 239 including the laws of this state.

240 Section 9. Section 740.701, Florida Statutes, is created to
 241 read:

242 740.701 Compliance.—

243 (1) If a fiduciary that has a right under this chapter to
 244 access a digital asset of an account holder complies with
 245 subsection (2), the custodian shall comply with the fiduciary's
 246 request for a record for:

247 (a) Access to the digital asset;

248 (b) Control of the digital asset; and

249 (c) A copy of the digital asset to the extent authorized by
 250 copyright law.

251 (2) If a request under subsection (1) is made by:

252 (a) A personal representative who has the right of access
 253 under s. 740.201, the request must be accompanied by a certified
 254 copy of the letters of administration of the personal
 255 representative, an order authorizing a curator or administrator
 256 ad litem, or other court order;

257 (b) A guardian that has the right of access under s.
 258 740.301, the request must be accompanied by a certified copy of
 259 letters of plenary guardianship of the property or a court order
 260 that gives the guardian authority over the digital asset;

261 (c) An agent that has the right of access under s. 740.401,

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262 the request must be accompanied by an original or a copy of the
 263 power of attorney which authorizes the agent to exercise
 264 authority over the digital asset and a certification of the
 265 agent, under penalty of perjury, that the power of attorney is
 266 in effect;

267 (d) A trustee that has the right of access under s.
 268 740.501, the request must be accompanied by a certified copy of
 269 the trust instrument, or a certification of trust under s.
 270 736.1017, which authorizes the trustee to exercise authority
 271 over the digital asset; or

272 (e) A person that is entitled to receive and collect
 273 specified digital assets, the request must be accompanied by a
 274 certified copy of an order of summary administration issued
 275 pursuant to chapter 735.

276 (3) A custodian shall comply with a request made under
 277 subsection (1) not later than 60 days after receipt. If the
 278 custodian fails to comply, the fiduciary may apply to the court
 279 for an order directing compliance.

280 (4) A custodian that receives a certification of trust may
 281 require the trustee to provide copies of excerpts from the
 282 original trust instrument and later amendments which designate
 283 the trustee and confer on the trustee the power to act in the
 284 pending transaction.

285 (5) A custodian that acts in reliance on a certification of
 286 trust without knowledge that the representations contained in it
 287 are incorrect is not liable to any person for so acting and may
 288 assume without inquiry the existence of facts stated in the
 289 certification.

290 (6) A custodian that enters into a transaction in good

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291 faith and in reliance on a certification of trust may enforce
 292 the transaction against the trust property as if the
 293 representations contained in the certification were correct.

294 (7) A custodian that demands the trust instrument in
 295 addition to a certification of trust or excerpts under
 296 subsection (4) is liable for damages if the court determines
 297 that the custodian did not act in good faith in demanding the
 298 trust instrument.

299 (8) This section does not limit the right of a person to
 300 obtain a copy of a trust instrument in a judicial proceeding
 301 concerning the trust.

302 Section 10. Section 740.801, Florida Statutes, is created
 303 to read:

304 740.801 Immunity.—A custodian and its officers, employees,
 305 and agents are immune from liability for any action done in good
 306 faith in compliance with this chapter.

307 Section 11. Section 740.901, Florida Statutes, is created
 308 to read:

309 740.901 Relation to Electronic Signatures in Global and
 310 National Commerce Act.—This chapter modifies, limits, or
 311 supersedes the Electronic Signatures in Global and National
 312 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 313 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
 314 or authorize electronic delivery of the notices described in s.
 315 103(b) of that act, 15 U.S.C. s. 7003(b).

316 Section 12. Section 740.911, Florida Statutes, is created
 317 to read:

318 740.911 Applicability.—

319 (1) Subject to subsection (2), this chapter applies to:

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320 (a) An agent acting under a power of attorney executed
 321 before, on, or after July 1, 2015;

322 (b) A personal representative acting for a decedent who
 323 died before, on, or after July 1, 2015;

324 (c) A guardian appointed through a guardianship proceeding,
 325 whether pending in a court or commenced before, on, or after
 326 July 1, 2015; and

327 (d) A trustee acting under a trust created before, on, or
 328 after July 1, 2015.

329 (2) This chapter does not apply to a digital asset of an
 330 employer used by an employee in the ordinary course of the
 331 employer's business.

332 Section 13. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

09/15/15
Meeting Date

102
Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Travis Hughes

Job Title Estate Planning Attorney

Address 3061 Tamiami Trail North, Suite 400
Street

Phone (239) 649-3118

Naples
City

FL
State

34103
Zip

Email thughes@ct-law.com

Speaking: For Against Information

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

Representing Real Property, Probate & Trust Law Section of the Florida Bar

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)

4/15/15
Meeting Date

SB102
Bill Number (if applicable)

Topic SB102 - Digital Anets

Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Director of Public Policy

Address 4500 Ponce de Leon Blvd
Street

Phone 786-343-2700

Miami FL 33137
City State Zip

Email mrichardson@aclu-fl.org

Speaking: For Against Information

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

Representing ACLU of 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.13.2015
Meeting Date

102
Bill Number (if applicable)

Topic SB102 / DIG. ASSETS

Amendment Barcode (if applicable)

Name SEBASTIAN ALEXANDER

Job Title LOBBYIST

Address 106 E COLLEGE AVE
Street

Phone 866.330.1355

TLH FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing YAHOO

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

15-Apr-2015

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

SB 102

Meeting Date

Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Steven DeIBianco

Job Title Exec Director

Address 1401 K St NW

Phone 703-615-6206

Street

Washington DC 20005

City

State

Zip

Email sdelbianco@netchoice.org

Speaking: For Against Information

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

Representing NetChoice

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)

4/15/2015
Meeting Date

SB 102
Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name ✓ Dan Sachs

Job Title Associate Manager, State Policy

Address 1299 Pennsylvania Ave SE, Ste 800
Street

Phone 202 716 2172

Washington DC 20004
City State Zip

Email dan.s@fb.com

Speaking: For Against Information

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

Representing Facebook

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)

4-15-15
Meeting Date

102
Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-224-2265

Tallahassee FL 32303
City State Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/2015
Meeting Date

102
Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Justia Sayfie

Job Title Attorney, Sayfie Law Firm

Address 450 E. Las Olas Blvd. Phone 954-523-2427
Street

Street

City

Ft Lauderdale FL 33301

State

Zip

Email _____

Speaking: For Against Information

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

Representing Google

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

April 2, 2015

The Honorable David Simmons
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 102 -- Digital Assets

Dear Chairman Simmons:

Senate Bill 102, relating Digital Assets has been referred to the Rules Committee. I am requesting your consideration on placing SB 102 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

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

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee
Cissy DuBose, Administrative Assistant of the Rules Committee

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: PCS/CS/SB 282 (692926)

INTRODUCER: Rules Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Hukill

SUBJECT: Tracking Devices or Tracking Applications

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 282 creates a noncriminal infraction, punishable by a \$250 fine, applicable to persons who install a tracking device or tracking application on the property of another person without their consent. A second or subsequent offense is a second degree misdemeanor.

The bill provides exceptions to the prohibition against such installation of tracking devices or applications.

The bill creates definitions for the terms “tracking application,” “tracking device,” “business entity,” and “person” for purposes of the bill.

The bill will have no impact on the state prison population. It is not known how many noncriminal infractions will occur or how many misdemeanor criminal prosecutions will be brought for subsequent offenses.

The bill becomes effective on October 1, 2015.

II. Present Situation:

Cell Phone Tracking

Any time a cellular phone is on, it will periodically send a signal to the local “base station”¹ to verify the strength of the phone’s connection to the provider network.² Cellular phones also communicate back and forth with base stations during phone calls.³ Providers divide their service area among base stations in the area, and the cellular phone communicates with different nearby base stations as the user moves around the service area.⁴ Providers keep close track of which base stations a phone communicates with so the provider knows which base stations to send phone calls to.⁵ The electronic record created by a cellular phone communicating with a base station is often referred to as “cell site location information” (CSLI).⁶

CSLI is also used by cellular providers to transmit location data for cellular phones that dial 911.⁷ The Federal Communications Commission (FCC) developed the Enhanced 911 program (E911) to ensure that wireless carriers provide location information to 911 dispatchers when a 911 call is placed from a cellular phone.⁸ Over time the FCC has created more stringent requirements for cellular providers that currently require specific location data such as latitude and longitude of the 911 caller.⁹ In similar form to the FCC requirements, Florida law requires the establishment of a statewide E911 program requiring providers to route 911 calls to the correct public safety answering points.¹⁰ This is accomplished by “selective routing based on the geographical location from which the call originated,” and requires providers to create automatic number identification and automatic location-identification features.¹¹

GPS Tracking

The Global Positioning System (GPS) is a system of twenty-four operating satellites that orbit the earth and transmit radio signals.¹² The GPS system is operated by the United States Air Force,¹³ and is used for civilian applications as well as national security and military

¹ The “base station” is the device or communications tower that transmits cellular radio signals so a telephone call can be made wirelessly. These towers are also referred to as “cellular towers.” See IEEE Global History Network, *Base Stations*, http://www.ieeeeghn.org/wiki/index.php/Cellular_Base_Stations (last visited Jan. 22, 2015).

² *ECPA Reform and the Revolution in Location Based Techs. & Servs before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (testimony of Matt Blaze, Assoc. Prof., Univ. Pa.).

³ *Id.* at 13.

⁴ *Id.* at 13.

⁵ *Id.* at 14.

⁶ *In re Application of U.S. for an Order Directing a Provider of Elec. Commc’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010).

⁷ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

⁸ Federal Commc’ns Comm’n, *Guide: 911 Wireless Services*, <http://www.fcc.gov/guides/wireless-911-services> (last visited Jan. 23, 2015).

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¹⁰ Section 365.172(3)(h), F.S.

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operations.¹⁴ GPS can be used for tracking and locating cellular phones that are equipped with hardware that can receive radio signals from GPS satellites.¹⁵ GPS technology can usually identify the location of a cellular phone within a distance of ten meters;¹⁶ however, more recent cellular phone models are the only models equipped with the proper hardware to utilize this technology.¹⁷

Tracking Software

Tracking software can be downloaded onto phones and other electronic devices and used to track the location of the device for mapping applications or other purposes.¹⁸ Some types of tracking software can monitor messages, emails, web sites that are visited, and contacts that are saved, in addition to tracking a device's location.¹⁹

Florida Law

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices. However, many of the chapter's provisions only apply to law enforcement entities (e.g., s. 934.42, F.S., authorizes a law enforcement officer to apply to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device²⁰).

The statute currently authorizes law enforcement officers to use a pen register,²¹ trap and trace device,²² or a mobile tracking device,²³ after receiving an ex parte court order from a judge.²⁴ To obtain a court order, the application must include the identity of the applicant, the identity of the law enforcement agency conducting the related investigation, and a certification that "the information likely to be obtained is relevant to an ongoing criminal investigation being

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²³ "Mobile tracking device" is not defined in Chapter 934, F.S.

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conducted.”²⁵ This certification is a lower standard than the probable cause standard²⁶ required for obtaining a lawful warrant.

The Florida Supreme Court recently addressed the question of whether probable cause was required for a law enforcement agency to gather real-time CSLI on a cellular phone user.²⁷ The Court found that cellular phones have become an “indispensable” part of most peoples’ lives,²⁸ and real-time CSLI tracking of a cellular phone requires a probable cause warrant.²⁹ Also, it should be noted that law enforcement officers who do get a probable cause warrant to gather real-time CSLI are not currently required to create a contemporaneous record describing in detail the circumstances under which the tracking device or application is being used.

Section 934.03, F.S., which applies to all persons, makes it a third degree felony³⁰ for a person to intentionally use the contents of an electronic communication, knowing or having reason to know that the information was obtained through the unlawful interception of the electronic communication (i.e., without the consent of both parties). The term “electronic communication” is defined as “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce.”³¹ However, the definition specifically excludes “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object.”³²

Florida law does not currently prohibit a private individual from using a tracking device or application to determine the location or movement of another person without the other person’s consent.

Federal Law

Title 18 of the United States Code governs electronic surveillance, including mobile tracking devices, pen registers, and other electronic tracking methods.³³ Title 18 allows law enforcement to gather stored electronic communications data pursuant to a court order when the law enforcement entity can show “specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”³⁴ The “specific and articulable facts” standard is lower than that required under the “probable cause” standard.³⁵

²⁵ Sections 934.32(2) and 934.42(2)(b), F.S.

²⁶ *Tracey v. Florida*, 2014 WL 5285929 (Fla. 2014).

²⁷ *Id.*

²⁸ *Id.* at 17.

²⁹ *Id.* at 19.

³⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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³⁴ 18 U.S.C. s. 2703(d) (2014).

³⁵ *In re U.S. for Historical Cell Site Data*, 724 F.3d 600 (5th Cir. 2013); *United States v. Thousand*, 558 Fed.Appx 666, 670 (7th Cir. 2014).

The law preempts any state laws that govern electronic surveillance and tracking, although states may enact more restrictive requirements.³⁶

III. Effect of Proposed Changes:

The bill creates the following definitions:

- “Business entity” means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state;
- “Tracking application” means any software program whose primary purpose is to track or identify the location or movement of an individual;
- “Tracking device” means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals; and
- “Person” means an individual and does not mean a business entity.

The bill creates a new section of the Florida Statutes making it a noncriminal infraction, punishable by a \$250 fine, for a person to knowingly install a tracking device or tracking application on another’s property without the other person’s consent. A second or subsequent violation is a second degree misdemeanor³⁷ In addition, the bill amends s. 493.6118, F.S., to add commission of the new offense as grounds for disciplinary action against persons regulated under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services), or who are engaged in activities regulated under that chapter.

The bill specifies that a person’s consent to be tracked is presumed to be revoked in the following circumstances:

- When the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- When the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485, F.S.

The prohibition against knowingly installing a tracking device or tracking application does not apply to:

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or application on another person’s property as part of a criminal investigation;
- A parent or legal guardian of a minor child who installs a tracking device or application on the minor’s property (when the parents or guardians are divorced, separated, or otherwise living apart from one another, this exception applies only if both parents or guardians consent to the installation of the device or application; however, if one parent or guardian has been granted sole custody, consent of the noncustodial parent is not required; the exemption also applies to the sole surviving parent or guardian.);

³⁶ *Florida v. Otte*, 887 So.2d 1186, 1187 (Fla. 2004).

³⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

- A caregiver of an elderly person or disabled adult, if the elderly person or disabled adult's treating physician certifies that such installation is necessary to ensure the safety of the elderly person or disabled adult; or
- A person acting in good faith on behalf of a business entity for a legitimate business purpose.
- (This provision does not apply to a person engaged in private investigation for another person unless the person for whom the investigation is being conducted would otherwise be exempt from the bill's provisions).
- An owner or lessor of a motor vehicle during the period of ownership or lease, provided that the device is removed before the vehicle title is transferred or the lease expires, or the new owner gives written consent for non-removal.
- The original manufacturer or the vehicle.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 282 anyone who violates the new law commits a criminal infraction, punishable by a \$250 fine. Any subsequent offense is a second degree misdemeanor with penalties which would likely include fines, fees, and court costs. In addition, persons regulated under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services), are subject to disciplinary action by the Department of Agriculture and Consumer Services.

C. Government Sector Impact:

How often noncriminal infractions or misdemeanor criminal cases will be brought under the new law or how often convicted defendants will be jailed is unknown. However, the bill will have no impact on the state prison population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.425 of the Florida Statutes.

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

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

PCS 692926 by Rules (Recommended by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015):

The committee substitute:

- Adds an exemption for owners or lessees of vehicles during the period of ownership;
- Adds an exemption for the original manufacturer of a motor vehicle;
- Limits the exemption for persons acting in good faith on behalf of a business entity for a legitimate business purpose. When the person who installs the tracking device is engaged in private investigation for another person, the exemption applies for the private investigator only if the person for whom the investigation is being conducted is otherwise exempt.
- Provides that a violation is grounds for discipline under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services).
- Provides that a first violation is a noncriminal infraction, punishable by a \$250 fine, and that any subsequent violation is a second degree misdemeanor.

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Adds an exemption for owners or lessees of vehicles during the period of ownership;
- Adds an exemption for the original manufacturer of a motor vehicle;
- Limits the exemption for persons acting in good faith on behalf of a business entity for a legitimate business purpose. When the person who installs the tracking device is engaged in private investigation for another person, the exemption applies for the private investigator only if the person for whom the investigation is being conducted is otherwise exempt.
- Provides that a violation is grounds for discipline under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services).
- Provides that a first violation is a noncriminal infraction, punishable by a \$250 fine, and that any subsequent violation is a second degree misdemeanor.

CS by Criminal Justice on March 30, 2015:

- Narrowed the definition of “tracking application” and “tracking device” to encompass applications and devices whose primary purpose was to track or identify its location;
- Added the definitions of “person” and “business entity”;
- Narrowed the prohibition against tracking a person’s location to only encompass the act of installing a tracking device or tracking application;
- Removed the requirement for law enforcement officers to create a contemporaneous record of the use of the tracking device or application;
- Modified the exception for law enforcement use to apply when a tracking device or tracking application is lawfully installed;
- Added a new exception for installing a tracking device or application by a caregiver of an elderly person or disabled adult; and
- Added a new exception for a person acting in good faith on behalf of a business entity.

B. Amendments:

None.



595-03737-15

Proposed Committee Substitute by the Committee on Rules
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to tracking devices or tracking applications; creating s. 934.425, F.S.; defining terms; prohibiting the installation of a tracking device or tracking application without a person's consent; creating a presumption that consent is revoked upon initiation of specified proceedings; providing exceptions to the prohibition on installation of tracking devices or tracking applications; providing criminal penalties; amending s. 493.6118, F.S.; providing that violations of the prohibition on installation of tracking devices and tracking applications by private investigative, private security, and repossession services are grounds for disciplinary action, to which penalties apply; providing an effective date.

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

Section 1. Section 934.425, Florida Statutes, is created to read:

934.425 Installation of tracking devices or tracking applications; exceptions; penalties.-

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

(a) "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this



595-03737-15

state.

(b) "Person" means an individual and does not mean a business entity.

(c) "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.

(d) "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.

(2) Except as provided in subsection (4), a person may not knowingly install a tracking device or tracking application on another person's property without the other person's consent.

(3) For purposes of this section, a person's consent is presumed to be revoked if:

(a) The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or

(b) The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485.

(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.

(b) A parent or legal guardian of a minor child that installs a tracking device or tracking application on the minor



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57 child's property if:

58 1. The parents or legal guardians are lawfully married to
59 each other and are not separated or otherwise living apart, and
60 either parent or legal guardian consents to the installation of
61 the tracking device or tracking application;

62 2. The parent or legal guardian is the sole surviving
63 parent or legal guardian of the minor child;

64 3. The parent or legal guardian has sole custody of the
65 minor child; or

66 4. The parents or legal guardians are divorced, separated,
67 or otherwise living apart and both consent to the installation
68 of the tracking device or tracking application.

69 (c) A caregiver of an elderly person or disabled adult, as
70 those terms are defined in s. 825.101, if the elderly person's
71 or disabled adult's treating physician certifies that the
72 installation of a tracking device or tracking application onto
73 the elderly person's or disabled adult's property is necessary
74 to ensure the safety of the elderly person or disabled adult.

75 (d) A person acting in good faith on behalf of a business
76 entity for a legitimate business purpose. This paragraph does
77 not apply to a person engaged in private investigation, as
78 defined in s. 493.6101, on behalf of another person unless such
79 activities would otherwise be exempt under this subsection if
80 performed by the person engaging the private investigator.

81 (e) An owner or lessee of a motor vehicle that installs, or
82 directs the installation of, a tracking device or tracking
83 application on such vehicle during the period of ownership or
84 lease, provided that:

85 1. The tracking device or tracking application is removed



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86 before the vehicle's title is transferred or the vehicle's lease
87 expires;

88 2. The new owner of the vehicle, in the case of a sale, or
89 the lessor of the vehicle, in the case of an expired lease,
90 consents in writing to the nonremoval of the tracking device or
91 tracking application; or

92 3. The owner of the vehicle at the time of the installation
93 of the tracking device or tracking application was the original
94 manufacturer of the vehicle.

95 (5) A person who violates this section commits a
96 noncriminal infraction, punishable by a \$250.00 fine, for a
97 first violation. A person who commits a second or subsequent
98 violation commits a misdemeanor of the second degree, punishable
99 as provided in s. 775.082 or s. 775.083.

100 Section 2. Paragraph (y) is added to subsection (1) of
101 section 493.6118, Florida Statutes, to read:

102 493.6118 Grounds for disciplinary action.—

103 (1) The following constitute grounds for which disciplinary
104 action specified in subsection (2) may be taken by the
105 department against any licensee, agency, or applicant regulated
106 by this chapter, or any unlicensed person engaged in activities
107 regulated under this chapter.

108 (y) Installation of a tracking device or tracking
109 application in violation of s. 934.425.

110 Section 3. This act shall take effect October 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 282

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Hukill

SUBJECT: Tracking Devices or Tracking Applications

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 282 creates a noncriminal infraction, punishable by a \$250 fine, applicable to persons who install a tracking device or tracking application on the property of another person without their consent. A second or subsequent offense is a second degree misdemeanor.

The bill provides exceptions to the prohibition against such installation of tracking devices or applications.

The bill creates definitions for the terms “tracking application,” “tracking device,” “business entity,” and “person” for purposes of the bill.

The bill will have no impact on the state prison population. It is not known how many noncriminal infractions will occur or how many misdemeanor criminal prosecutions will be brought for subsequent offenses.

The bill becomes effective on October 1, 2015.

II. Present Situation:

Cell Phone Tracking

Any time a cellular phone is on, it will periodically send a signal to the local “base station”¹ to verify the strength of the phone’s connection to the provider network.² Cellular phones also communicate back and forth with base stations during phone calls.³ Providers divide their service area among base stations in the area, and the cellular phone communicates with different nearby base stations as the user moves around the service area.⁴ Providers keep close track of which base stations a phone communicates with so the provider knows which base stations to send phone calls to.⁵ The electronic record created by a cellular phone communicating with a base station is often referred to as “cell site location information” (CSLI).⁶

CSLI is also used by cellular providers to transmit location data for cellular phones that dial 911.⁷ The Federal Communications Commission (FCC) developed the Enhanced 911 program (E911) to ensure that wireless carriers provide location information to 911 dispatchers when a 911 call is placed from a cellular phone.⁸ Over time the FCC has created more stringent requirements for cellular providers that currently require specific location data such as latitude and longitude of the 911 caller.⁹ In similar form to the FCC requirements, Florida law requires the establishment of a statewide E911 program requiring providers to route 911 calls to the correct public safety answering points.¹⁰ This is accomplished by “selective routing based on the geographical location from which the call originated,” and requires providers to create automatic number identification and automatic location-identification features.¹¹

GPS Tracking

The Global Positioning System (GPS) is a system of twenty-four operating satellites that orbit the earth and transmit radio signals.¹² The GPS system is operated by the United States Air Force,¹³ and is used for civilian applications as well as national security and military

¹ The “base station” is the device or communications tower that transmits cellular radio signals so a telephone call can be made wirelessly. These towers are also referred to as “cellular towers.” See IEEE Global History Network, *Base Stations*, http://www.ieeeeghn.org/wiki/index.php/Cellular_Base_Stations (last visited Jan. 22, 2015).

² *ECPA Reform and the Revolution in Location Based Techs. & Servs before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (testimony of Matt Blaze, Assoc. Prof., Univ. Pa.).

³ *Id.* at 13.

⁴ *Id.* at 13.

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⁶ *In re Application of U.S. for an Order Directing a Provider of Elec. Commc’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010).

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conducted.”²⁵ This certification is a lower standard than the probable cause standard²⁶ required for obtaining a lawful warrant.

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The bill creates the following definitions:

- “Business entity” means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state;
- “Tracking application” means any software program whose primary purpose is to track or identify the location or movement of an individual;
- “Tracking device” means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals; and
- “Person” means an individual and does not mean a business entity.

The bill creates a new section of the Florida Statutes making it a noncriminal infraction, punishable by a \$250 fine, for a person to knowingly install a tracking device or tracking application on another’s property without the other person’s consent. A second or subsequent violation is a second degree misdemeanor³⁷ In addition, the bill amends s. 493.6118, F.S., to add commission of the new offense as grounds for disciplinary action against persons regulated under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services), or who are engaged in activities regulated under that chapter.

The bill specifies that a person’s consent to be tracked is presumed to be revoked in the following circumstances:

- When the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- When the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485, F.S.

The prohibition against knowingly installing a tracking device or tracking application does not apply to:

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or application on another person’s property as part of a criminal investigation;
- A parent or legal guardian of a minor child who installs a tracking device or application on the minor’s property (when the parents or guardians are divorced, separated, or otherwise living apart from one another, this exception applies only if both parents or guardians consent to the installation of the device or application; however, if one parent or guardian has been granted sole custody, consent of the noncustodial parent is not required; the exemption also applies to the sole surviving parent or guardian.);

³⁶ *Florida v. Otte*, 887 So.2d 1186, 1187 (Fla. 2004).

³⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

- A caregiver of an elderly person or disabled adult, if the elderly person or disabled adult's treating physician certifies that such installation is necessary to ensure the safety of the elderly person or disabled adult; or
- A person acting in good faith on behalf of a business entity for a legitimate business purpose.
- (This provision does not apply to a person engaged in private investigation for another person unless the person for whom the investigation is being conducted would otherwise be exempt from the bill's provisions).
- An owner or lessor of a motor vehicle during the period of ownership or lease, provided that the device is removed before the vehicle title is transferred or the lease expires, or the new owner gives written consent for non-removal.
- The original manufacturer or the vehicle.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 282 anyone who violates the new law commits a criminal infraction, punishable by a \$250 fine. Any subsequent offense is a second degree misdemeanor with penalties which would likely include fines, fees, and court costs. In addition, persons regulated under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services), are subject to disciplinary action by the Department of Agriculture and Consumer Services.

C. Government Sector Impact:

How often noncriminal infractions or misdemeanor criminal cases will be brought under the new law or how often convicted defendants will be jailed is unknown. However, the bill will have no impact on the state prison population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.425 of the Florida Statutes.

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

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

CS/CS by Rules on April 15, 2015:

- Adds an exemption for owners or lessees of vehicles during the period of ownership;
- Adds an exemption for the original manufacturer of a motor vehicle;
- Limits the exemption for persons acting in good faith on behalf of a business entity for a legitimate business purpose. When the person who installs the tracking device is engaged in private investigation for another person, the exemption applies for the private investigator only if the person for whom the investigation is being conducted is otherwise exempt.
- Provides that a violation is grounds for discipline under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services).
- Provides that a first violation is a noncriminal infraction, punishable by a \$250 fine, and that any subsequent violation is a second degree misdemeanor.

CS by Criminal Justice on March 30, 2015:

- Narrowed the definition of “tracking application” and “tracking device” to encompass applications and devices whose primary purpose was to track or identify its location;
- Added the definitions of “person” and “business entity”;
- Narrowed the prohibition against tracking a person’s location to only encompass the act of installing a tracking device or tracking application;
- Removed the requirement for law enforcement officers to create a contemporaneous record of the use of the tracking device or application;
- Modified the exception for law enforcement use to apply when a tracking device or tracking application is lawfully installed;
- Added a new exception for installing a tracking device or application by a caregiver of an elderly person or disabled adult; and
- Added a new exception for a person acting in good faith on behalf of a business entity.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Hukill

591-03136-15

2015282c1

1 A bill to be entitled
 2 An act relating to tracking devices or tracking
 3 applications; creating s. 934.425, F.S.; defining
 4 terms; prohibiting the installation of a tracking
 5 device or tracking application without a person's
 6 consent; creating a presumption that consent is
 7 revoked upon initiation of specified proceedings;
 8 providing exceptions to the prohibition on
 9 installation of tracking devices or tracking
 10 applications; providing criminal penalties; providing
 11 an effective date.

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

15 Section 1. Section 934.425, Florida Statutes, is created to
 16 read:

17 934.425 Installation of tracking devices or tracking
 18 applications; exceptions; penalties.-

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

20 (a) "Business entity" means any form of corporation,
 21 partnership, association, cooperative, joint venture, business
 22 trust, or sole proprietorship that conducts business in this
 23 state.

24 (b) "Person" means an individual and does not mean a
 25 business entity.

26 (c) "Tracking application" means any software program whose
 27 primary purpose is to track or identify the location or movement
 28 of an individual.

29 (d) "Tracking device" means any device whose primary

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591-03136-15

2015282c1

30 purpose is to reveal its location or movement by the
 31 transmission of electronic signals.

32 (2) Except as provided in subsection (4), a person may not
 33 knowingly install a tracking device or tracking application on
 34 another person's property without the other person's consent.

35 (3) For purposes of this section, a person's consent is
 36 presumed to be revoked if:

37 (a) The consenting person and the person to whom consent
 38 was given are lawfully married and one person files a petition
 39 for dissolution of marriage from the other; or

40 (b) The consenting person or the person to whom consent was
 41 given files an injunction for protection against the other
 42 person pursuant to s. 741.30, s. 741.315, s. 784.046, or s.
 43 784.0485.

44 (4) This section does not apply to:

45 (a) A law enforcement officer as defined in s. 943.10, or
 46 any local, state, federal, or military law enforcement agency,
 47 that lawfully installs a tracking device or tracking application
 48 on another person's property as part of a criminal
 49 investigation.

50 (b) A parent or legal guardian of a minor child that
 51 installs a tracking device or tracking application on the minor
 52 child's property if:

53 1. The parents or legal guardians are lawfully married to
 54 each other and are not separated or otherwise living apart, and
 55 either parent or legal guardian consents to the installation of
 56 the tracking device or tracking application;

57 2. The parent or legal guardian is the sole surviving
 58 parent or legal guardian of the minor child;

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591-03136-15

2015282c1

59 3. The parent or legal guardian has sole custody of the
60 minor child; or

61 4. The parents or legal guardians are divorced, separated,
62 or otherwise living apart and both consent to the installation
63 of the tracking device or tracking application.

64 (c) A caregiver of an elderly person or disabled adult, as
65 those terms are defined in s. 825.101, if the elderly person's
66 or disabled adult's treating physician certifies that the
67 installation of a tracking device or tracking application onto
68 the elderly person's or disabled adult's property is necessary
69 to ensure the safety of the elderly person or disabled adult.

70 (d) A person acting in good faith on behalf of a business
71 entity for a legitimate business purpose.

72 (5) A person who violates this section commits a
73 misdemeanor of the second degree, punishable as provided in s.
74 775.082 or s. 775.083.

75 Section 2. This act shall take effect October 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

April 8, 2015

The Honorable David Simmons
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 282 – Tracking Devices or Applications

Dear Chairman Simmons:

Senate Bill 282, relating Tracking Devices or Applications has been referred to the Rules Committee. I am requesting your consideration on placing SB 282 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

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

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee
Cissy DuBose, Administrative Assistant of the Rules Committee

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of Committee on Rules

BILL: CS/SB 240

INTRODUCER: Transportation Committee and Senators Brandes and Gaetz

SUBJECT: Issuance of Driver Licenses and Identification Cards

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	Fav/CS
2.	Miller	Miller	ATD	Favorable
3.	Jones	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 240 allows the Department of Highway Safety and Motor Vehicles (DHSMV) to accept a military personnel identification card as proof of social security number for issuing a driver license or identification card.

The bill has no fiscal impact on the private sector or government.

The bill takes effect July 1, 2015.

II. Present Situation:

REAL ID Act of 2005

The REAL ID Act became effective nationwide on May 11, 2008. The Act establishes minimum standards for the issuance of state driver licenses and identification cards. The Act prohibits Federal agencies from accepting driver licenses and identification cards for official uses¹ if the United States Department of Homeland Security (DHS) has determined the state does not meet the minimum standards.

¹ Department of Homeland Security, *REAL ID FAQs for the Public*, Jan. 11, 2015. <http://www.dhs.gov/real-id-public-faqs> (last visited Mar. 8, 2015). "Official uses are defined as accessing Federal facilities, entering nuclear power plants, and boarding federally-regulated commercial aircraft."

Individuals without a license from a compliant jurisdiction may present alternative forms of identification accepted by a federal agency, such as a U.S. Passport. Agencies may have additional processes to accommodate individuals lacking the prescribed identification documents.²

Enforcement of the REAL ID Act will happen in phases³:

Phase	Enforcement	Full Enforcement Date
1	Restricted areas for DHS's Nebraska Avenue Complex headquarters	April 21, 2014
2	Restricted areas for all Federal facilities and nuclear power plants	July 21, 2014
3	Semi-restricted areas for most Federal facilities	January 19, 2015
3a	Facility Security Levels 1 and 2	January 19, 2015
3b	Facility Security Levels 3, 4, and 5	October 10, 2015
4	Boarding federally regulated commercial aircraft	No sooner than 2016

Florida's Compliance with the REAL ID Act⁴

Florida began issuing REAL ID compliant driver licenses and identification cards on January 4, 2010. The REAL ID-compliant credentials have a star in the upper right corner of the card. According to the DHSMV, over 11.5 million individuals have met the new identity standards for a Florida driver license or identification card.⁵ Florida currently has a 70 percent compliance rate with the REAL ID Act.

Military Personnel Identification Cards

The Department of Defense (DoD) issues two main types of military identification cards. The Common Access Card is the standard identification for active duty uniformed service personnel, Selected Reserve, DoD civilian employees, and eligible contractor personnel.⁶ The Uniformed Services ID Card is held by retired military and military family members. The card is necessary for retired military and military family members to access military service benefits and privileges.⁷

Proof of Social Security Number

Current law requires an applicant for a driver license or identification card to present proof of social security number satisfactory to the DHSMV.⁸

² *Id.*

³ *Id.*

⁴ Department of Highway Safety and Motor Vehicles, *The REAL ID Act*, <http://www.flhsmv.gov/realid/> (last visited Mar. 8, 2015).

⁵ Email from DHSMV, (Mar. 9, 2015) (On file with the Senate Committee on Transportation).

⁶ Department of Defense, *Common Access Card (CAC)*, <http://www.cac.mil/common-access-card/> (last visited Mar. 8, 2015).

⁷ Department of Defense, *Uniformed Services ID Card*, <http://www.cac.mil/uniformed-services-id-card/> (last visited Mar. 8, 2015).

⁸ Sections 322.08(2)(a) and 322.051(1)(a)1., F.S.

The DHSMV currently requires an original of one of the following documents that show the applicant's name and social security number⁹:

- Social Security Card
- W-2 Form
- Pay-Check
- Form SSA-1099 (Social Security Benefit Statement)
- Form 1099

III. Effect of Proposed Changes:

The bill allows the DHSMV to accept a military identification card as proof of social security number for issuing a driver license or identification card.

The bill also makes technical changes to correct references to United States Citizenship and Immigration Services, the government agency that oversees lawful immigration to the United States.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

⁹ Department of Highway Safety and Motor Vehicles, *Documents Now Required When You Come to a Driver License Office*, <http://www.flhsmv.gov/ddl/address.html> (last visited March 25, 2015).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 322.051 and 322.08.

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 Transportation on March 12, 2015:

The CS removes the provision that the DHSMV must accept an active or retired military personnel identification card as proof of identity for issuance of a driver license or identification card.

It, instead, allows the DHSMV to accept military identification cards for proof of social security number when issuing a driver license or identification card.

The change was made to maintain compliance with the REAL-ID Act.

B. Amendments:

None.

By the Committee on Transportation; and Senators Brandes and Gaetz

596-02199-15

2015240c1

1 A bill to be entitled
 2 An act relating to driver licenses and identification
 3 cards; amending ss. 322.051 and 322.08, F.S.;
 4 providing for the Department of Highway Safety and
 5 Motor Vehicles to accept a military identification
 6 card to meet certain requirements for issuance of an
 7 identification card or a driver license, respectively;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (a) of subsection (1) of section
 13 322.051, Florida Statutes, is amended to read:
 14 322.051 Identification cards.—
 15 (1) Any person who is 5 years of age or older, or any
 16 person who has a disability, regardless of age, who applies for
 17 a disabled parking permit under s. 320.0848, may be issued an
 18 identification card by the department upon completion of an
 19 application and payment of an application fee.
 20 (a) The application must include the following information
 21 regarding the applicant:
 22 1. Full name (first, middle or maiden, and last), gender,
 23 proof of social security card number satisfactory to the
 24 department, which may include a military identification card,
 25 county of residence, mailing address, proof of residential
 26 address satisfactory to the department, country of birth, and a
 27 brief description.
 28 2. Proof of birth date satisfactory to the department.
 29 3. Proof of identity satisfactory to the department. Such

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30 proof must include one of the following documents issued to the
 31 applicant:
 32 a. A driver license record or identification card record
 33 from another jurisdiction that required the applicant to submit
 34 a document for identification which is substantially similar to
 35 a document required under sub-subparagraph b., sub-subparagraph
 36 c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph
 37 f., sub-subparagraph g., or sub-subparagraph h.;
 38 b. A certified copy of a United States birth certificate;
 39 c. A valid, unexpired United States passport;
 40 d. A naturalization certificate issued by the United States
 41 Department of Homeland Security;
 42 e. A valid, unexpired alien registration receipt card
 43 (green card);
 44 f. A Consular Report of Birth Abroad provided by the United
 45 States Department of State;
 46 g. An unexpired employment authorization card issued by the
 47 United States Department of Homeland Security; or
 48 h. Proof of nonimmigrant classification provided by the
 49 United States Department of Homeland Security, for an original
 50 identification card. In order to prove nonimmigrant
 51 classification, an applicant must provide at least one of the
 52 following documents. In addition, the department may require
 53 applicants to produce United States Department of Homeland
 54 Security documents for the sole purpose of establishing the
 55 maintenance of, or efforts to maintain, continuous lawful
 56 presence:
 57 (I) A notice of hearing from an immigration court
 58 scheduling a hearing on any proceeding.

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596-02199-15

2015240c1

59 (II) A notice from the Board of Immigration Appeals
60 acknowledging pendency of an appeal.

61 (III) A notice of the approval of an application for
62 adjustment of status issued by the United States ~~Bureau of~~
63 Citizenship and Immigration Services.

64 (IV) An official documentation confirming the filing of a
65 petition for asylum or refugee status or any other relief issued
66 by the United States ~~Bureau of~~ Citizenship and Immigration
67 Services.

68 (V) A notice of action transferring any pending matter from
69 another jurisdiction to Florida, issued by the United States
70 ~~Bureau of~~ Citizenship and Immigration Services.

71 (VI) An order of an immigration judge or immigration
72 officer granting relief that authorizes the alien to live and
73 work in the United States, including, but not limited to,
74 asylum.

75 (VII) Evidence that an application is pending for
76 adjustment of status to that of an alien lawfully admitted for
77 permanent residence in the United States or conditional
78 permanent resident status in the United States, if a visa number
79 is available having a current priority date for processing by
80 the United States ~~Bureau of~~ Citizenship and Immigration
81 Services.

82 (VIII) On or after January 1, 2010, an unexpired foreign
83 passport with an unexpired United States Visa affixed,
84 accompanied by an approved I-94, documenting the most recent
85 admittance into the United States.

86
87 An identification card issued based on documents required in

Page 3 of 6

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596-02199-15

2015240c1

88 sub-subparagraph g. or sub-subparagraph h. is valid for a period
89 not to exceed the expiration date of the document presented or 1
90 year, whichever occurs first.

91 Section 2. Subsection (2) of section 322.08, Florida
92 Statutes, is amended to read:

93 322.08 Application for license; requirements for license
94 and identification card forms.—

95 (2) Each such application shall include the following
96 information regarding the applicant:

97 (a) Full name (first, middle or maiden, and last), gender,
98 proof of social security card number satisfactory to the
99 department, which may include a military identification card,
100 county of residence, mailing address, proof of residential
101 address satisfactory to the department, country of birth, and a
102 brief description.

103 (b) Proof of birth date satisfactory to the department.

104 (c) Proof of identity satisfactory to the department. Such
105 proof must include one of the following documents issued to the
106 applicant:

107 1. A driver license record or identification card record
108 from another jurisdiction that required the applicant to submit
109 a document for identification which is substantially similar to
110 a document required under subparagraph 2., subparagraph 3.,
111 subparagraph 4., subparagraph 5., subparagraph 6., subparagraph
112 7., or subparagraph 8.;

113 2. A certified copy of a United States birth certificate;

114 3. A valid, unexpired United States passport;

115 4. A naturalization certificate issued by the United States
116 Department of Homeland Security;

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596-02199-15

2015240c1

- 117 5. A valid, unexpired alien registration receipt card
118 (green card);
- 119 6. A Consular Report of Birth Abroad provided by the United
120 States Department of State;
- 121 7. An unexpired employment authorization card issued by the
122 United States Department of Homeland Security; or
- 123 8. Proof of nonimmigrant classification provided by the
124 United States Department of Homeland Security, for an original
125 driver license. In order to prove nonimmigrant classification,
126 an applicant must provide at least one of the following
127 documents. In addition, the department may require applicants to
128 produce United States Department of Homeland Security documents
129 for the sole purpose of establishing the maintenance of, or
130 efforts to maintain, continuous lawful presence:
- 131 a. A notice of hearing from an immigration court scheduling
132 a hearing on any proceeding.
- 133 b. A notice from the Board of Immigration Appeals
134 acknowledging pendency of an appeal.
- 135 c. A notice of the approval of an application for
136 adjustment of status issued by the United States ~~Bureau of~~
137 Citizenship and Immigration Services.
- 138 d. An official documentation confirming the filing of a
139 petition for asylum or refugee status or any other relief issued
140 by the United States ~~Bureau of~~ Citizenship and Immigration
141 Services.
- 142 e. A notice of action transferring any pending matter from
143 another jurisdiction to this state issued by the United States
144 ~~Bureau of~~ Citizenship and Immigration Services.
- 145 f. An order of an immigration judge or immigration officer

Page 5 of 6

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596-02199-15

2015240c1

- 146 granting relief that authorizes the alien to live and work in
147 the United States, including, but not limited to, asylum.
- 148 g. Evidence that an application is pending for adjustment
149 of status to that of an alien lawfully admitted for permanent
150 residence in the United States or conditional permanent resident
151 status in the United States, if a visa number is available
152 having a current priority date for processing by the United
153 States ~~Bureau of~~ Citizenship and Immigration Services.
- 154 h. On or after January 1, 2010, an unexpired foreign
155 passport with an unexpired United States Visa affixed,
156 accompanied by an approved I-94, documenting the most recent
157 admittance into the United States.
- 158
- 159 A driver license or temporary permit issued based on documents
160 required in subparagraph 7. or subparagraph 8. is valid for a
161 period not to exceed the expiration date of the document
162 presented or 1 year.
- 163 (d) Whether the applicant has previously been licensed to
164 drive, and, if so, when and by what state, and whether any such
165 license or driving privilege has ever been disqualified,
166 revoked, or suspended, or whether an application has ever been
167 refused, and, if so, the date of and reason for such
168 disqualification, suspension, revocation, or refusal.
- 169 (e) Each such application may include fingerprints and
170 other unique biometric means of identity.
- 171 Section 3. This act shall take effect July 1, 2015.
- 172

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2015

I respectfully request that **Senate Bill #240**, relating to **Driver Licenses and Identification Cards**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 984

INTRODUCER: Senator Braynon

SUBJECT: Exemption from Legislative Lobbying Requirements

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Carlton</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 984 clarifies that the use of a public facility or public property provided from a governmental entity to a legislator for a public purpose is not an expenditure for purposes of the “legislative expenditure ban” in s. 11.045, F.S., regardless of whether the governmental entity is a principal. Unlike the current Rules of the Florida Senate and the Administrative Policy Manual of the Florida House of Representatives, this statutory exception does not include any requirement for approval by the presiding officers prior to the expenditure being made between the governmental entity and the legislator.

The effective date of the bill is July 1, 2015.

II. Present Situation:

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and legislative lobbyist compensation reports, and it contains the “legislative expenditure ban.”

Section 11.045(4)(a), F.S., provides in pertinent part, that “no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature shall knowingly accept, directly or indirectly, any expenditure . . .” A “principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”¹ This appears to include governmental entities such as municipalities, counties, water management districts, universities, and colleges.

Section 11.045(1)(c), F.S., defines the term “expenditure” as:

¹ Section 11.045(1)(i), F.S.

a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4). (emphasis supplied.)

The term “lobbying” means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”²

The following penalties can be imposed for violation of the legislative expenditure ban:³

- A fine of not more than \$5,000;
- Reprimand;
- Censure;
- Probation; and/or
- Prohibition on lobbying for a period not to exceed 24 months.

Section 11.045(5), F.S., requires each house of the legislature to provide by rule a procedure for determining the applicability and interpretation of this section. To that end, the Florida Senate has adopted Senate Rule 9.8.

The pertinent portion of that Rule for this legislation is contained in Senate Rule 9.8, Part One – Expenditures, Section One – General Guidelines, Subsection g – Exceptions, No. 6. The text of the rule reads:

6. Government to Government Expenditures

Real property or a facility owned or operated by a state or local public agency or entity that is a lobbying principal and transportation to, from, and at the location provided by that agency or entity may, with the prior approval of the respective state legislative presiding officer or his or her designee, be used without payment, by a member, committee, or staff of the Legislature for a public legislative purpose. Such purposes include publicly noticed legislative committee meetings and site visits to operations conducted by the public agency or entity. Allowable free uses also specifically include legislative district offices and sub-offices and the normally attendant utilities, parking, janitorial services, building maintenance, and telecommunications equipment and services common to a government building in which the office is located. Allowable free use does not extend to sports or entertainment venues; does not include food, beverages, or entertainment; and does not include free parking privileges at any location other than a district office or sub-office. (Emphasis supplied.)

² Section 11.045(1)(e), F.S.

³ Section 11.045(7), F.S.

The Florida House of Representatives has included a similar approval process in its policies.⁴

III. Effect of Proposed Changes:

Section 1 creates a statutory exception to the definition of “expenditure” for a “public-legislative use.” The exception provides that a “public-legislative use” is the “use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register a person as a lobbyist pursuant to this section.”

This statutory exception does not include the requirement of approval by the presiding officers currently contained in both the Senate Rules and the Administrative Policy Manual for the House of Representatives.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Minimal.

⁴ Florida House of Representatives, “Administrative Policy Manual” dated December 2014, pages 9 and 10.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The “old” gifts law codified in s. 112.3148, F.S., which predates the “Legislative Expenditure Ban,” prohibits certain gifts in excess of \$100 to reporting individuals (anyone required to file annual financial disclosure,⁵ including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, and municipal government (and certain other governmental organizations) valued at more than \$100 if a public purpose can be shown. Current law requires annual disclosure of such gifts on a Commission on Ethics (CE) Form 10. Because both ss. 11.045 and 112.3148, F.S., apply to members of the Legislature, it is important to note that, if a member or employee were to accept use of a public facility or public property from a governmental entity as authorized by the bill, the member or employee would be required to disclose the gift on a CE Form 10 (under current law and the provisions of the bill).

VIII. Statutes Affected:

This bill substantially amends section 11.045 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.

⁵ FLA. CONST., art. II, s. 8, and s. 112.3144, F.S.

By Senator Braynon

36-00239A-15

2015984__

1 A bill to be entitled
 2 An act relating to an exemption from legislative
 3 lobbying requirements; amending s. 11.045, F.S.;
 4 revising the definition of the term "expenditure";
 5 specifying that the term does not include use of a
 6 public facility or public property that is made
 7 available by a governmental entity to a legislator for
 8 a public purpose, to exempt such use from legislative
 9 lobbying requirements; providing an effective date.

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

12
 13 Section 1. Paragraph (c) of subsection (1) of section
 14 11.045, Florida Statutes, is amended to read:

15 11.045 Lobbying before the Legislature; registration and
 16 reporting; exemptions; penalties.—

17 (1) As used in this section, unless the context otherwise
 18 requires:

19 (c) "Expenditure" means a payment, distribution, loan,
 20 advance, reimbursement, deposit, or anything of value made by a
 21 lobbyist or principal for the purpose of lobbying. The term does
 22 not include:

23 1. Contributions or expenditures reported pursuant to
 24 chapter 106 or federal election law, campaign-related personal
 25 services provided without compensation by individuals
 26 volunteering their time, any other contribution or expenditure
 27 made by or to a political party or affiliated party committee,
 28 or any other contribution or expenditure made by an organization
 29 that is exempt from taxation under 26 U.S.C. s. 527 or s.

Page 1 of 2

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

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2015984__

30 501(c) (4) .
 31 2. A public-legislative use, which is the use of a public
 32 facility or public property that is made available by a
 33 governmental entity to a legislator for a public purpose,
 34 regardless of whether the governmental entity is required to
 35 register a person as a lobbyist pursuant to this section.
 36 Section 2. This act shall take effect July 1, 2015.

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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 Rules

BILL: PCS/CS/SB 1048 (654822)

INTRODUCER: Rules Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Garcia

SUBJECT: Motor Vehicle Manufacturer Licenses

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<u>Recommended: Fav/CS</u>
3.	<u>Jones</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1048 addresses numerous issues related to contractual agreements between motor vehicle licensees (manufacturers, distributors, and importers) and motor vehicle dealers. The bill provides additional grounds to deny, suspend, or revoke a license held by a manufacturer, factory branch, distributor, or importer. It also prohibits manufacturers from taking certain actions against dealers, and requires certain procedures be followed by the manufacturer when dealing with dealers.

The bill provides that its provisions apply to all franchise agreements entered into, renewed, or amended after October 1, 1988, unless such application impairs valid contractual agreements in violation of the State Constitution or United States Constitution.

The fiscal impact of the bill is indeterminate (see Section V).

The bill provides that it becomes effective upon becoming law.

II. Present Situation:

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with dealers to sell particular vehicles

that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between manufacturers and dealers. Existing law requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

A manufacturer, factory branch, distributor, or importer must be licensed under ss. 320.60-320.70, F.S., to engage in business in this state.¹ A person desiring to be licensed under ss. 320.60-320.70, F.S., must submit an application to the DHSMV along with required documents to determine the fitness of the applicant or licensee to engage in the business for which the applicant or licensee desires to be licensed.² The DHSMV may prescribe an abbreviated application for renewal of a license if the licensee has previously filed an initial application, and shall include necessary information to bring current the information required in the initial application.³

The requirements regulating the contractual business relationship between a dealer and a manufacturer are primarily found in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).⁴ These sections of law specify, in part:

- The conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- The process, timing, and notice requirements for manufacturers to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;
- The amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

In 2009, the DHSMV held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of various amendments to that Act.⁵

¹ Section 320.61(1), F.S.

² Section 320.63, F.S.

³ Section 320.61(2), F.S.

⁴Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), <http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf>.

⁵ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). In this holding, the DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013) (The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.).

Currently, s. 320.64, F.S., provides 38 grounds for the DHSMV's denial, suspension, or revocation of the license of a manufacturer. A violation of any of these provisions entitles a dealer to rights and remedies contained within the Florida Automobile Dealers Act.

III. Effect of Proposed Changes:

The bill addresses several issues related to the contractual agreements between motor vehicle licensees and dealers.

Section 1 of the bill amends and adds several subsections in s. 320.64, F.S., to modify and add acts an applicant or licensee (further referred to as the licensee) is prohibited from committing. The bill:

Adds a new paragraph to subsection (10) to provide:

- A dealer who has received approval of its facility from the licensee within ten years prior to an incentive program offered by the licensee premised, wholly or in part, on dealer facility improvements is deemed to be in full compliance with facility-related requirements under the offer for the duration of the ten-year period; and
- A dealer who has completed a prior approved facility incentive program, standard, or policy during the ten year period but does not comply with the provisions related to facility, sign, or image under a new incentive program still remains entitled to the benefits under the older program plus any increase in benefits between the old and new programs for the remainder of the ten-year period.

Amends subsection (25) to provide that an audit of service-related payments, and incentive payments can be performed by a licensee only during the 12-month period immediately following the date the claim or incentive was paid.

- An "incentive" is defined as including any bonus, incentive, or other monetary or nonmonetary thing of value.
- The subsection is further amended to provide that a licensee may deny a service-related claim or incentive claim, or subject a dealer to a charge-back *only* for the portion of a claim proven to be false or fraudulent by the licensee.

Amends subsection (26) to add the following prohibited act:

- A licensee cannot take adverse action against a dealer because a motor vehicle sold or leased to a customer was resold or exported after it was delivered to the customer unless the licensee provides written notification to the motor vehicle dealer of such resale or export within 12 months after the date the dealer sold or leased the vehicle to the customer.

Adds subsection (39) to provide that the license of a licensee may be denied, suspended, or revoked if a licensee fails to make any payment due to a dealer for temporary replacement vehicles loaned, rented, or provided by the dealer to or for its service or repair customers, provided the dealer complied with the terms of the franchise agreement or other contract with the licensee, even if the motor vehicle has been leased, rented, titled, or registered to an entity owned or controlled by the dealer.

Adds subsection (40) to provide that the license of a licensee may be denied, suspended, or revoked if a licensee requires or coerces, or attempts to require or coerce, a dealer to purchase goods from a vendor selected, identified, or designated by the licensee or one of its parents, subsidiaries, divisions, or affiliates, without making available to the dealer the option to obtain the goods or services of substantially similar design and quality from a vendor chosen by the dealer.

- A dealer who desires to use goods or services of substantially similar design and quality from a chosen vendor must provide written notice to the licensee along with samples or clear descriptions of the goods or services. The licensee has up to 30 days to respond and may not unreasonably withhold approval. If the dealer receives no response within 30 days, approval to use the alternative goods or services is deemed granted.
- The term “goods or services” used in this bill refers to goods and services used to construct or renovate dealership facilities, and does not include:
 - Intellectual property of the licensee including signage, facility, or building materials that incorporate the licensee’s trademark or copyright;
 - Any special tool or training required by the licensee;
 - Any part to be used in repairs under warranty obligations of a licensee;
 - Any good or service paid for entirely by the licensee; or
 - Any licensee’s design or architectural review service.

Adds subsection (41) to provide that the license of a licensee may be denied, suspended, or revoked if a licensee:

- Requires a dealer, directly or indirectly, to advance, pay for, or reimburse the licensee for any costs related to advertisement for a motor vehicle, but may offer advertising or promotional materials to a dealer for a fee as long as the use of such materials is voluntary to the dealer;
- Requires a dealer to participate in, contribute to, affiliate with, or join, or preclude a portion of its dealers in a designated market from establishing, a dealer advertising or marketing entity; or
- Takes or threatens to take adverse action against a dealer that refuses to participate in a dealer advertising or marketing entity.

Section 2 provides that this act applies to all franchise agreements entered into, renewed, or amended after October 1, 1988, unless such application impairs valid contractual agreements in violation of the Florida Constitution or the United States Constitution.

Section 3 provides that this act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Contracts Clause of the United States Constitution provides that no state shall pass any law impairing the obligation of contracts.⁶ However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.⁷

Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional.⁸

The bill provides an exception to the act if such application violates the State Constitution or United States Constitution.

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

None.

B. Private Sector Impact:

The impact of PCS/CS/SB 1048 on the private sector is indeterminate. To the extent the agreements between dealers and manufacturers, distributors, and importers change due to compliance with existing laws, the parties could be positively or negatively impacted. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs.

C. Government Sector Impact:

The impact of the bill on the government sector is indeterminate. The DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

⁶ U.S. CONST. art. I, s. 10.

⁷ *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

⁸ See *Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (Upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers.); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV.A. 99 N 1985, 2001 WL 36400171, at *13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors.).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

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

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

PCS 654822 by Rules (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 2, 2015):

The CS deleted a provision which provided that:

- A licensee cannot terminate, cancel, discontinue, or not renew a dealer's franchise agreement on the basis of any act related to a customer's export or resell of a motor vehicle, *unless* the licensee proves by clear and convincing evidence before a trier of fact that the majority owner or dealer-principal had actual knowledge at the time the vehicle was being sold that the customer intended to export or resell the vehicle.

CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 2, 2015:

The CS deleted a provision which provided that:

- A licensee cannot terminate, cancel, discontinue, or not renew a dealer's franchise agreement on the basis of any act related to a customer's export or resell of a motor vehicle, *unless* the licensee proves by clear and convincing evidence before a trier of fact that the majority owner or dealer-principal had actual knowledge at the time the vehicle was being sold that the customer intended to export or resell the vehicle.

CS by Transportation on March 26, 2015:

The CS added:

- A licensee may not refuse to pay a dealer who participated in an incentive program related to facility improvements or signs "any increase in benefits" between the older program and new program offered within a ten-year period;
- A dealer has the option to obtain like kind, design, and quality goods or services from a vendor chosen by the dealer, and includes the process for obtaining approval by the licensee, defines "good and services," and provides exceptions; and
- A licensee may not require a dealer, directly or indirectly, to advance, pay for, or reimburse the licensee for any costs related to advertisement for a motor vehicle

The CS removed:

- The amendments to ss. 320.641, 320.642, and 320.643, F.S., which added that a dealer could file a protest or petition against a manufacturer with a “court of competent jurisdiction”;
- The language to be used to determine if a complainant dealer has substantially prevailed when petitioning a notice of intent to discontinue, cancel, not renew, or replace a franchise agreement;
- The creation of an alternative cause of civil action procedure for a dealer directly and adversely affected by the action or conduct of the licensee; and
- The provision that required a manufacture to provide a written statement or notice disclosing whether the manufacturer has an ownership interest in a prescribed vendor.

The CS changed the timeframe a licensee can audit incentive payments from six months to 12 months. Additionally, a licensee may not take adverse action against a dealer because a motor vehicle sold, leased, or delivered to a customer was resold or exported more than 120 days after it was delivered to the customer, instead of 90 days.

B. Amendments:

None.



949918

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 338 and 339
insert:

Section 3. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.



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

And the title is amended as follows:

Between lines 47 and 48

insert:

providing for severability;



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Proposed Committee Substitute by the Committee on Rules
(Appropriations Subcommittee on Transportation, Tourism, and
Economic Development)

A bill to be entitled

An act relating to motor vehicle manufacturer licenses; amending s. 320.64, F.S.; providing that a motor vehicle dealer who received approval of a facility from an applicant or licensee within a specified timeframe is deemed to be in full compliance with facility-related requirements; providing that such motor vehicle dealer is entitled to certain benefits under certain circumstances; providing applicability; conforming a cross-reference; revising provisions related to an applicant or licensee who has undertaken or engaged in an audit of service-related payments or incentive payments; reducing the timeframe for the performance of such audits; defining the term "incentive"; authorizing an applicant or licensee to deny or charge back only the portion of a service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with certain procedures; prohibiting an applicant or licensee from taking adverse action against a motor vehicle dealer under certain circumstances; prohibiting an applicant or licensee from failing to make any payment due a motor vehicle dealer that substantially complies with the terms of a certain contract between the two parties regarding

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reimbursement for temporary replacement vehicles under certain circumstances; authorizing a motor vehicle dealer to purchase goods or services from a vendor chosen by the motor vehicle dealer, subject to certain requirements; defining the term "goods or services"; prohibiting an applicant or licensee from requiring a motor vehicle dealer to pay for certain advertising or marketing, or to participate in or affiliate with a dealer advertising or marketing entity; prohibiting an applicant or licensee from taking or threatening to take any adverse action against a motor vehicle dealer who refuses to join or participate in such entity; defining the term "adverse action"; providing that an applicant or licensee may not require a dealer to participate in, or may not preclude only a number of its motor vehicle dealers in a designated market area from establishing, a voluntary motor vehicle dealer advertising or marketing entity; providing that an applicant or licensee is not required to fund such an entity under certain circumstances; providing for retroactive applicability under certain circumstances; providing an effective date.

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

Section 1. Present paragraph (h) of subsection (10) of section 320.64, Florida Statutes, is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, present paragraph (h) of subsection (10) and subsections (25) and (26)

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56 of that section are amended, and subsections (39), (40), and
57 (41) are added to that section, to read:

58 320.64 Denial, suspension, or revocation of license;
59 grounds.—A license of a licensee under s. 320.61 may be denied,
60 suspended, or revoked within the entire state or at any specific
61 location or locations within the state at which the applicant or
62 licensee engages or proposes to engage in business, upon proof
63 that the section was violated with sufficient frequency to
64 establish a pattern of wrongdoing, and a licensee or applicant
65 shall be liable for claims and remedies provided in ss. 320.695
66 and 320.697 for any violation of any of the following
67 provisions. A licensee is prohibited from committing the
68 following acts:

69 (10)

70 (h) If an applicant or licensee offers any bonus,
71 incentive, rebate, or other program, standard, or policy that is
72 available to a motor vehicle dealer in this state and that is
73 premised, wholly or in part, on dealer facility improvements,
74 renovations, expansions, remodeling, alterations, or
75 installations of signs or other image elements, a motor vehicle
76 dealer who completes an approved facility in reliance upon such
77 offer shall be deemed to be in full compliance with all of the
78 applicant's or licensee's requirements related to facility,
79 sign, and image for the duration of a 10-year period following
80 such completion. If, during the 10-year period, the applicant or
81 licensee establishes a program, standard, or policy that offers
82 a new bonus, incentive, rebate, or other benefit, a motor
83 vehicle dealer that completed an approved facility in reliance
84 upon the prior program, standard, or policy but does not comply



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85 with the provisions related to facility, sign, or image under
86 the new program, standard, or policy, except as hereinafter
87 provided, may not be eligible for benefits under the provisions
88 related to facility, sign, or image of the new program,
89 standard, or policy, but shall remain entitled to all the
90 benefits under the older program, standard, or policy, plus any
91 increase in the benefits between the old and new programs,
92 standards, or policies during the remainder of the 10-year
93 period. Nothing contained in this subsection shall in any way
94 obviate, affect, or alter the provisions of subsection (38).

95 (i) ~~(h)~~ A violation of paragraphs (b)-(h) ~~(b)~~ through (g) is
96 not a violation of s. 320.70 and does not subject any licensee
97 to any criminal penalty under s. 320.70.

98 (25) The applicant or licensee has undertaken or engaged in
99 an audit of warranty, maintenance, and other service-related
100 payments or incentive payments, including payments to a motor
101 vehicle dealer under any licensee-issued program, policy, or
102 other benefit, which previously have been paid to a motor
103 vehicle dealer in violation of this section or has failed to
104 comply with any of its obligations under s. 320.696. An
105 applicant or licensee may reasonably and periodically audit a
106 motor vehicle dealer to determine the validity of paid claims as
107 provided in s. 320.696. Audits of warranty, maintenance, and
108 other service-related payments shall be performed by an
109 applicant or licensee only during the 12-month ~~1-year~~ period
110 immediately following the date the claim was paid. Audits ~~Audit~~
111 of incentive payments shall ~~only~~ be performed only during the
112 12-month ~~for an 18-month~~ period immediately following the date
113 the incentive was paid. As used in this section, the term



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114 "incentive" includes any bonus, incentive, or other monetary or
115 nonmonetary thing of value. After such time periods have
116 elapsed, all warranty, maintenance, and other service-related
117 payments and incentive payments shall be deemed final and
118 incontrovertible for any reason notwithstanding any otherwise
119 applicable law, and the motor vehicle dealer shall not be
120 subject to any charge-back or repayment. An applicant or
121 licensee may deny a claim or, as a result of a timely conducted
122 audit, impose a charge-back against a motor vehicle dealer for
123 warranty, maintenance, or other service-related payments or
124 incentive payments only if the applicant or licensee can show
125 that the warranty, maintenance, or other service-related claim
126 or incentive claim was false or fraudulent or that the motor
127 vehicle dealer failed to substantially comply with the
128 reasonable written and uniformly applied procedures of the
129 applicant or licensee for such repairs or incentives, but only
130 for that portion of the claim so shown. Notwithstanding the
131 terms of any franchise agreement, guideline, program, policy, or
132 procedure, an applicant or licensee may deny or charge back only
133 that portion of a warranty, maintenance, or other service-
134 related claim or incentive claim which the applicant or licensee
135 has proven to be false or fraudulent or for which the dealer
136 failed to substantially comply with the reasonable written and
137 uniformly applied procedures of the applicant or licensee for
138 such repairs or incentives, as set forth in this subsection. An
139 applicant or licensee may not charge back a motor vehicle dealer
140 ~~back~~ subsequent to the payment of a warranty, maintenance, or
141 service-related claim or incentive claim unless, within 30 days
142 after a timely conducted audit, a representative of the



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143 applicant or licensee first meets in person, by telephone, or by
144 video teleconference with an officer or employee of the dealer
145 designated by the motor vehicle dealer. At such meeting the
146 applicant or licensee must provide a detailed explanation, with
147 supporting documentation, as to the basis for each of the claims
148 for which the applicant or licensee proposed a charge-back to
149 the dealer and a written statement containing the basis upon
150 which the motor vehicle dealer was selected for audit or review.
151 Thereafter, the applicant or licensee must provide the motor
152 vehicle dealer's representative a reasonable period after the
153 meeting within which to respond to the proposed charge-backs,
154 with such period to be commensurate with the volume of claims
155 under consideration, but in no case less than 45 days after the
156 meeting. The applicant or licensee is prohibited from changing
157 or altering the basis for each of the proposed charge-backs as
158 presented to the motor vehicle dealer's representative following
159 the conclusion of the audit unless the applicant or licensee
160 receives new information affecting the basis for one or more
161 charge-backs and that new information is received within 30 days
162 after the conclusion of the timely conducted audit. If the
163 applicant or licensee claims the existence of new information,
164 the dealer must be given the same right to a meeting and right
165 to respond as when the charge-back was originally presented.
166 After all internal dispute resolution processes provided through
167 the applicant or licensee have been completed, the applicant or
168 licensee shall give written notice to the motor vehicle dealer
169 of the final amount of its proposed charge-back. If the dealer
170 disputes that amount, the dealer may file a protest with the
171 department within 30 days after receipt of the notice. If a



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172 protest is timely filed, the department shall notify the
173 applicant or licensee of the filing of the protest, and the
174 applicant or licensee may not take any action to recover the
175 amount of the proposed charge-back until the department renders
176 a final determination, which is not subject to further appeal,
177 that the charge-back is in compliance with the provisions of
178 this section. In any hearing pursuant to this subsection, the
179 applicant or licensee has the burden of proof that its audit and
180 resulting charge-back are in compliance with this subsection.

181 (26) Notwithstanding the terms of any franchise agreement,
182 including any licensee's program, policy, or procedure, the
183 applicant or licensee has refused to allocate, sell, or deliver
184 motor vehicles; charged back or withheld payments or other
185 things of value for which the dealer is otherwise eligible under
186 a sales promotion, program, or contest; prevented a motor
187 vehicle dealer from participating in any promotion, program, or
188 contest; or has taken or threatened to take any adverse action
189 against a dealer, including charge-backs, reducing vehicle
190 allocations, or terminating or threatening to terminate a
191 franchise because the dealer sold or leased a motor vehicle to a
192 customer who exported the vehicle to a foreign country or who
193 resold the vehicle, unless the licensee proves that the dealer
194 knew or reasonably should have known that the customer intended
195 to export or resell the motor vehicle. There is a rebuttable
196 presumption that the dealer neither knew nor reasonably should
197 have known of its customer's intent to export or resell the
198 vehicle if the vehicle is titled or registered in any state in
199 this country. A licensee may not take any action against a motor
200 vehicle dealer, including reducing its allocations or supply of



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201 motor vehicles to the dealer, or charging back a dealer for an
202 incentive payment previously paid, unless the licensee first
203 meets in person, by telephone, or video conference with an
204 officer or other designated employee of the dealer. At such
205 meeting, the licensee must provide a detailed explanation, with
206 supporting documentation, as to the basis for its claim that the
207 dealer knew or reasonably should have known of the customer's
208 intent to export or resell the motor vehicle. Thereafter, the
209 motor vehicle dealer shall have a reasonable period,
210 commensurate with the number of motor vehicles at issue, but not
211 less than 15 days, to respond to the licensee's claims. If,
212 following the dealer's response and completion of all internal
213 dispute resolution processes provided through the applicant or
214 licensee, the dispute remains unresolved, the dealer may file a
215 protest with the department within 30 days after receipt of a
216 written notice from the licensee that it still intends to take
217 adverse action against the dealer with respect to the motor
218 vehicles still at issue. If a protest is timely filed, the
219 department shall notify the applicant or licensee of the filing
220 of the protest, and the applicant or licensee may not take any
221 action adverse to the dealer until the department renders a
222 final determination, which is not subject to further appeal,
223 that the licensee's proposed action is in compliance with the
224 provisions of this subsection. In any hearing pursuant to this
225 subsection, the applicant or licensee has the burden of proof on
226 all issues raised by this subsection. An applicant or licensee
227 may not take any adverse action against a motor vehicle dealer
228 because the dealer sold or leased a motor vehicle to a customer
229 who exported the vehicle to a foreign country or who resold the



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230 vehicle unless the applicant or licensee provides written
231 notification to the motor vehicle dealer of such resale or
232 export within 12 months after the date the dealer sold or leased
233 the vehicle to the customer.

234 (39) Notwithstanding the terms of any agreement, program,
235 incentive, bonus, policy, or rule, an applicant or licensee
236 fails to make any payment pursuant to any of the foregoing for
237 any temporary replacement motor vehicle loaned, rented, or
238 provided by a motor vehicle dealer to or for its service or
239 repair customers, even if the temporary replacement motor
240 vehicle has been leased, rented, titled, or registered to the
241 motor vehicle dealer's rental or leasing division or an entity
242 that is owned or controlled by the motor vehicle dealer,
243 provided that the motor vehicle dealer or its rental or leasing
244 division or entity complies with the written and uniformly
245 enforced vehicle eligibility, use, and reporting requirements
246 specified by the applicant or licensee in its agreement,
247 program, policy, bonus, incentive, or rule relating to loaner
248 vehicles.

249 (40) Notwithstanding the terms of any franchise agreement,
250 the applicant or licensee has required or coerced, or attempted
251 to require or coerce, a motor vehicle dealer to purchase goods
252 or services from a vendor selected, identified, or designated by
253 the applicant or licensee, or one of its parents, subsidiaries,
254 divisions, or affiliates, by agreement, standard, policy,
255 program, incentive provision, or otherwise, without making
256 available to the motor vehicle dealer the option to obtain the
257 goods or services of substantially similar design and quality
258 from a vendor chosen by the motor vehicle dealer. If the motor



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259 vehicle dealer exercises such option, the dealer must provide
260 written notice of its desire to use the alternative goods or
261 services to the applicant or licensee, along with samples or
262 clear descriptions of the alternative goods or services that the
263 dealer desires to use. The licensee or applicant shall have the
264 opportunity to evaluate the alternative goods or services for up
265 to 30 days to determine whether it will provide a written
266 approval to the motor vehicle dealer to use said alternative
267 goods or services. Approval may not be unreasonably withheld by
268 the applicant or licensee. If the motor vehicle dealer does not
269 receive a response from the applicant or licensee within 30
270 days, approval to use the alternative goods or services shall be
271 deemed granted. If a dealer using alternative goods or services
272 complies with the terms of this subsection and has received
273 approval from the licensee or applicant, the dealer shall not be
274 ineligible for all benefits described in the agreement,
275 standard, policy, program, incentive provision, or otherwise
276 solely for having used such alternative goods or services. As
277 used in this subsection, the term "goods or services" is limited
278 to such goods and services used to construct or renovate
279 dealership facilities, or furniture and fixtures at the
280 dealership facilities. The term does not include:

281 (a) Any intellectual property of the applicant or licensee,
282 including signage incorporating the applicant's or licensee's
283 trademark or copyright, or facility or building materials to the
284 extent that the applicant's or licensee's trademark is displayed
285 thereon;

286 (b) Any special tool and training as required by the
287 licensee or applicant;



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288 (c) Any part to be used in repairs under warranty
289 obligations of an applicant or licensee;
290 (d) Any good or service paid for entirely by the applicant
291 or licensee; or
292 (e) Any applicant's or licensee's design or architectural
293 review service.
294 (41) (a) The applicant or licensee, by agreement, policy,
295 program, standard, or otherwise, requires a motor vehicle
296 dealer, directly or indirectly, to advance or pay for, or to
297 reimburse the applicant or licensee for, any costs related to
298 the creation, development, showing, placement, or publication in
299 any media of any advertisement for a motor vehicle; requires a
300 motor vehicle dealer to participate in, contribute to, affiliate
301 with, or join a dealer advertising or marketing group, fund,
302 pool, association, or other entity; or takes or threatens to
303 take any adverse action against a motor vehicle dealer that
304 refuses to join or participate in such group, fund, pool,
305 association, or other entity. As used in this subsection, the
306 term "adverse action" includes, but is not limited to, reducing
307 allocations, charging fees for a licensee's or dealer's
308 advertising or a marketing group's advertising or marketing,
309 terminating or threatening to terminate the motor vehicle
310 dealer's franchise agreement, reducing any incentive for which
311 the motor vehicle dealer is eligible, or engaging in any action
312 that fails to take into account the equities of the motor
313 vehicle dealer.
314 (b) The applicant or licensee requires a dealer to
315 participate in, or precludes a number of its motor vehicle
316 dealers in a designated market area from establishing, a



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317 voluntary motor vehicle dealer advertising or marketing group,
318 fund, pool, association, or other entity. Except as provided in
319 an agreement, if a motor vehicle dealer chooses to form an
320 independent advertising or marketing group, the applicant or
321 licensee is not required to fund such group.
322 (c) This subsection may not prohibit an applicant or
323 licensee from offering advertising or promotional materials to a
324 motor vehicle dealer for a fee or charge, as long as the use of
325 such advertising or promotional materials is voluntary for the
326 motor vehicle dealer.
327
328 A motor vehicle dealer who can demonstrate that a violation of,
329 or failure to comply with, any of the preceding provisions by an
330 applicant or licensee will or can adversely and pecuniarily
331 affect the complaining dealer, shall be entitled to pursue all
332 of the remedies, procedures, and rights of recovery available
333 under ss. 320.695 and 320.697.
334 Section 2. This act applies to all franchise agreements
335 entered into, renewed, or amended after October 1, 1988, except
336 to the extent that such application would impair valid
337 contractual agreements, in violation of the State Constitution
338 or the United States Constitution.
339 Section 3. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1048

INTRODUCER: Rules Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Garcia

SUBJECT: Motor Vehicle Manufacturer Licenses

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<u>Recommended: Fav/CS</u>
3.	<u>Jones</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1048 addresses numerous issues related to contractual agreements between motor vehicle licensees (manufacturers, distributors, and importers) and motor vehicle dealers. The bill provides additional grounds to deny, suspend, or revoke a license held by a manufacturer, factory branch, distributor, or importer. It also prohibits manufacturers from taking certain actions against dealers, and requires certain procedures be followed by the manufacturer when dealing with dealers.

The bill provides that its provisions apply to all franchise agreements entered into, renewed, or amended after October 1, 1988, unless such application impairs valid contractual agreements in violation of the State Constitution or United States Constitution.

The bill provides a severability clause.

The fiscal impact of the bill is indeterminate (see Section V).

The bill provides that it becomes effective upon becoming law.

II. Present Situation:

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with dealers to sell particular vehicles that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between manufacturers and dealers. Existing law requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

A manufacturer, factory branch, distributor, or importer must be licensed under ss. 320.60-320.70, F.S., to engage in business in this state.¹ A person desiring to be licensed under ss. 320.60-320.70, F.S., must submit an application to the DHSMV along with required documents to determine the fitness of the applicant or licensee to engage in the business for which the applicant or licensee desires to be licensed.² The DHSMV may prescribe an abbreviated application for renewal of a license if the licensee has previously filed an initial application, and shall include necessary information to bring current the information required in the initial application.³

The requirements regulating the contractual business relationship between a dealer and a manufacturer are primarily found in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).⁴ These sections of law specify, in part:

- The conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- The process, timing, and notice requirements for manufacturers to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;
- The amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

In 2009, the DHSMV held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of various amendments to that Act.⁵

¹ Section 320.61(1), F.S.

² Section 320.63, F.S.

³ Section 320.61(2), F.S.

⁴ Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), <http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf>.

⁵ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). In this holding, the DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013) (The DHSMV has indicated it will be applying this holding to every amendment to the

Currently, s. 320.64, F.S., provides 38 grounds for the DHSMV's denial, suspension, or revocation of the license of a manufacturer. A violation of any of these provisions entitles a dealer to rights and remedies contained within the Florida Automobile Dealers Act.

III. Effect of Proposed Changes:

The bill addresses several issues related to the contractual agreements between motor vehicle licensees and dealers.

Section 1 of the bill amends and adds several subsections in s. 320.64, F.S., to modify and add acts an applicant or licensee (further referred to as the licensee) is prohibited from committing. The bill:

Adds a new paragraph to subsection (10) to provide:

- A dealer who has received approval of its facility from the licensee within ten years prior to an incentive program offered by the licensee premised, wholly or in part, on dealer facility improvements is deemed to be in full compliance with facility-related requirements under the offer for the duration of the ten-year period; and
- A dealer who has completed a prior approved facility incentive program, standard, or policy during the ten year period but does not comply with the provisions related to facility, sign, or image under a new incentive program still remains entitled to the benefits under the older program plus any increase in benefits between the old and new programs for the remainder of the ten-year period.

Amends subsection (25) to provide that an audit of service-related payments, and incentive payments can be performed by a licensee only during the 12-month period immediately following the date the claim or incentive was paid.

- An "incentive" is defined as including any bonus, incentive, or other monetary or nonmonetary thing of value.
- The subsection is further amended to provide that a licensee may deny a service-related claim or incentive claim, or subject a dealer to a charge-back *only* for the portion of a claim proven to be false or fraudulent by the licensee.

Amends subsection (26) to add the following prohibited act:

- A licensee cannot take adverse action against a dealer because a motor vehicle sold or leased to a customer was resold or exported after it was delivered to the customer unless the licensee provides written notification to the motor vehicle dealer of such resale or export within 12 months after the date the dealer sold or leased the vehicle to the customer.

Adds subsection (39) to provide that the license of a licensee may be denied, suspended, or revoked if a licensee fails to make any payment due to a dealer for temporary replacement vehicles loaned, rented, or provided by the dealer to or for its service or repair customers, provided the dealer complied with the terms of the franchise agreement or other contract with the

Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.).

licensee, even if the motor vehicle has been leased, rented, titled, or registered to an entity owned or controlled by the dealer.

Adds subsection (40) to provide that the license of a licensee may be denied, suspended, or revoked if a licensee requires or coerces, or attempts to require or coerce, a dealer to purchase goods from a vendor selected, identified, or designated by the licensee or one of its parents, subsidiaries, divisions, or affiliates, without making available to the dealer the option to obtain the goods or services of substantially similar design and quality from a vendor chosen by the dealer.

- A dealer who desires to use goods or services of substantially similar design and quality from a chosen vendor must provide written notice to the licensee along with samples or clear descriptions of the goods or services. The licensee has up to 30 days to respond and may not unreasonably withhold approval. If the dealer receives no response within 30 days, approval to use the alternative goods or services is deemed granted.
- The term “goods or services” used in this bill refers to goods and services used to construct or renovate dealership facilities, and does not include:
 - Intellectual property of the licensee including signage, facility, or building materials that incorporate the licensee’s trademark or copyright;
 - Any special tool or training required by the licensee;
 - Any part to be used in repairs under warranty obligations of a licensee;
 - Any good or service paid for entirely by the licensee; or
 - Any licensee’s design or architectural review service.

Adds subsection (41) to provide that the license of a licensee may be denied, suspended, or revoked if a licensee:

- Requires a dealer, directly or indirectly, to advance, pay for, or reimburse the licensee for any costs related to advertisement for a motor vehicle, but may offer advertising or promotional materials to a dealer for a fee as long as the use of such materials is voluntary to the dealer;
- Requires a dealer to participate in, contribute to, affiliate with, or join, or preclude a portion of its dealers in a designated market from establishing, a dealer advertising or marketing entity; or
- Takes or threatens to take adverse action against a dealer that refuses to participate in a dealer advertising or marketing entity.

Section 2 provides that this act applies to all franchise agreements entered into, renewed, or amended after October 1, 1988, unless such application impairs valid contractual agreements in violation of the Florida Constitution or the United States Constitution.

Section 3 creates an undesignated section of Florida law to provide a severability clause, providing that if any provision of this act or its application to another person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application.

Section 4 provides that this act takes effect upon becoming law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Contracts Clause of the United States Constitution provides that no state shall pass any law impairing the obligation of contracts.⁶ However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.⁷

Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional.⁸

The bill provides an exception to the act if such application violates the State Constitution or United States Constitution.

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

None.

B. Private Sector Impact:

The impact of CS/CS/SB 1048 on the private sector is indeterminate. To the extent the agreements between dealers and manufacturers, distributors, and importers change due to

⁶ U.S. CONST. art. I, s. 10.

⁷ *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

⁸ See *Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (Upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers.); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV.A. 99 N 1985, 2001 WL 36400171, at *13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors.).

compliance with existing laws, the parties could be positively or negatively impacted. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs.

C. Government Sector Impact:

The impact of the bill on the government sector is indeterminate. The DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 15, 2015:

The CS deleted a provision which provided that:

- A licensee cannot terminate, cancel, discontinue, or not renew a dealer's franchise agreement on the basis of any act related to a customer's export or resell of a motor vehicle, *unless* the licensee proves by clear and convincing evidence before a trier of fact that the majority owner or dealer-principal had actual knowledge at the time the vehicle was being sold that the customer intended to export or resell the vehicle.

The CS also added a severability clause as an additional section in the bill.

CS by Transportation on March 26, 2015:

The CS added:

- A licensee may not refuse to pay a dealer who participated in an incentive program related to facility improvements or signs "any increase in benefits" between the older program and new program offered within a ten-year period;
- A dealer has the option to obtain like kind, design, and quality goods or services from a vendor chosen by the dealer, and includes the process for obtaining approval by the licensee, defines "good and services," and provides exceptions; and
- A licensee may not require a dealer, directly or indirectly, to advance, pay for, or reimburse the licensee for any costs related to advertisement for a motor vehicle

The CS removed:

- The amendments to ss. 320.641, 320.642, and 320.643, F.S., which added that a dealer could file a protest or petition against a manufacturer with a “court of competent jurisdiction”;
- The language to be used to determine if a complainant dealer has substantially prevailed when petitioning a notice of intent to discontinue, cancel, not renew, or replace a franchise agreement;
- The creation of an alternative cause of civil action procedure for a dealer directly and adversely affected by the action or conduct of the licensee; and
- The provision that required a manufacture to provide a written statement or notice disclosing whether the manufacturer has an ownership interest in a prescribed vendor.

The CS changed the timeframe a licensee can audit incentive payments from six months to 12 months. Additionally, a licensee may not take adverse action against a dealer because a motor vehicle sold, leased, or delivered to a customer was resold or exported more than 120 days after it was delivered to the customer, instead of 90 days.

B. Amendments:

None.



943836

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2015	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 358 and 359
insert:

Section 3. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.



943836

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

And the title is amended as follows:

Between lines 47 and 48

insert:

providing for severability;

By the Committee on Transportation; and Senator Garcia

596-02921-15

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1 A bill to be entitled
 2 An act relating to motor vehicle manufacturer
 3 licenses; amending s. 320.64, F.S.; providing that a
 4 motor vehicle dealer who receives approval of a
 5 facility from an applicant or licensee within a
 6 specified timeframe is deemed to be in full compliance
 7 with facility-related requirements; providing that
 8 such motor vehicle dealer are entitled to certain
 9 benefits under certain circumstances; providing
 10 applicability; conforming a cross-reference; revising
 11 provisions related to an applicant or licensee who has
 12 undertaken or engaged in an audit of service-related
 13 payments or incentive payments; limiting the timeframe
 14 for the performance of such audits; defining the term
 15 "incentive"; providing that an applicant or licensee
 16 may deny or charge back only the portion of a service-
 17 related claim or incentive claim which the applicant
 18 or licensee has proven to be false or fraudulent or
 19 for which the dealer failed to substantially comply
 20 with certain procedures; prohibiting an applicant or
 21 licensee from taking adverse action against a motor
 22 vehicle dealer under certain circumstances;
 23 prohibiting an applicant or licensee from failing to
 24 make any payment due a motor vehicle dealer that
 25 substantially complies with the terms of a certain
 26 contract between the two parties regarding
 27 reimbursement for temporary replacement vehicles under
 28 certain circumstances; authorizing a motor vehicle
 29 dealer to purchase goods or services from a vendor

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30 chosen by the motor vehicle dealer, subject to certain
 31 requirements; defining the term "goods or services";
 32 prohibiting an applicant or licensee from requiring a
 33 motor vehicle dealer to pay for certain advertising or
 34 marketing, or to participate in or affiliate with a
 35 dealer advertising or marketing entity; providing that
 36 an applicant or licensee may not take or threaten to
 37 take any adverse action against a motor vehicle dealer
 38 who refuses to join or participate in such entity;
 39 defining the term "adverse action"; providing that an
 40 applicant or licensee may not require a dealer to
 41 participate in, or may not preclude only a number of
 42 its motor vehicle dealers in a designated market area
 43 from establishing, a voluntary motor vehicle dealer
 44 advertising or marketing entity; providing that an
 45 applicant or licensee is not required to fund such an
 46 entity under certain circumstances; providing for
 47 retroactive applicability under certain circumstances;
 48 providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Present paragraph (h) of subsection (10) of
 53 section 320.64, Florida Statutes, is redesignated as paragraph
 54 (i), a new paragraph (h) is added to that subsection, present
 55 paragraph (h) of subsection (10) and subsections (25) and (26)
 56 of that section are amended, and subsections (39), (40), and
 57 (41) are added to that section, to read:
 58 320.64 Denial, suspension, or revocation of license;

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59 grounds.—A license of a licensee under s. 320.61 may be denied,
 60 suspended, or revoked within the entire state or at any specific
 61 location or locations within the state at which the applicant or
 62 licensee engages or proposes to engage in business, upon proof
 63 that the section was violated with sufficient frequency to
 64 establish a pattern of wrongdoing, and a licensee or applicant
 65 shall be liable for claims and remedies provided in ss. 320.695
 66 and 320.697 for any violation of any of the following
 67 provisions. A licensee is prohibited from committing the
 68 following acts:

69 (10)

70 (h) If the applicant or licensee offers any bonus,
 71 incentive, rebate, or other program, standard, or policy that is
 72 available to a motor vehicle dealer in this state and that is
 73 premised, wholly or in part, on dealer facility improvements,
 74 renovations, expansion, remodeling, alterations, or installation
 75 of signs or other image elements, and if the motor vehicle
 76 dealer completes an approved facility in reliance upon such
 77 offer, the motor vehicle dealer shall be deemed to be in full
 78 compliance with all of the applicant's or licensee's
 79 requirements related to facility, sign, and image for the
 80 duration of a 10-year period following such completion. If,
 81 during the 10-year period, the applicant or licensee establishes
 82 a program, standard, or policy that offers a new bonus,
 83 incentive, rebate, or other benefit, and if a motor vehicle
 84 dealer has completed an approved facility in reliance upon the
 85 prior program, standard, or policy but does not comply with the
 86 provisions related to facility, sign, or image under the new
 87 program, standard, or policy, except as hereinafter provided,

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88 the motor vehicle dealer may not be eligible for benefits under
 89 the provisions related to facility, sign, or image of the new
 90 program, standard, or policy, but shall remain entitled to all
 91 the benefits under the older program, standard, or policy, plus
 92 any increase in the benefits between the old and new programs,
 93 standards, or policies during the remainder of the 10-year
 94 period. Nothing contained in this subsection shall in any way
 95 obviate, affect, or alter the provisions of subsection (38).

96 (i) ~~(h)~~ A violation of paragraphs (b)-(h) ~~(b)~~ through ~~(g)~~ is
 97 not a violation of s. 320.70 and does not subject any licensee
 98 to any criminal penalty under s. 320.70.

99 (25) The applicant or licensee has undertaken or engaged in
 100 an audit of warranty, maintenance, and other service-related
 101 payments or incentive payments, including payments to a motor
 102 vehicle dealer under any licensee-issued program, policy, or
 103 other benefit, which previously have been paid to a motor
 104 vehicle dealer in violation of this section or has failed to
 105 comply with any of its obligations under s. 320.696. An
 106 applicant or licensee may reasonably and periodically audit a
 107 motor vehicle dealer to determine the validity of paid claims as
 108 provided in s. 320.696. Audits of warranty, maintenance, and
 109 other service-related payments shall be performed by an
 110 applicant or licensee only during the 12-month ~~1-year~~ period
 111 immediately following the date the claim was paid. ~~Audits~~ Audit
 112 of incentive payments shall ~~only~~ be performed only during the
 113 12-month ~~for an 18-month~~ period immediately following the date
 114 the incentive was paid. As used in this section, the term
 115 "incentive" includes any bonus, incentive, or other monetary or
 116 nonmonetary thing of value. After such time periods have

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117 elapsed, all warranty, maintenance, and other service-related
 118 payments and incentive payments shall be deemed final and
 119 incontrovertible for any reason notwithstanding any otherwise
 120 applicable law, and the motor vehicle dealer shall not be
 121 subject to any charge-back or repayment. An applicant or
 122 licensee may deny a claim or, as a result of a timely conducted
 123 audit, impose a charge-back against a motor vehicle dealer for
 124 warranty, maintenance, or other service-related payments or
 125 incentive payments only if the applicant or licensee can show
 126 that the warranty, maintenance, or other service-related claim
 127 or incentive claim was false or fraudulent or that the motor
 128 vehicle dealer failed to substantially comply with the
 129 reasonable written and uniformly applied procedures of the
 130 applicant or licensee for such repairs or incentives, but only
 131 for that portion of the claim so shown. Notwithstanding the
 132 terms of any franchise agreement, guideline, program, policy, or
 133 procedure, an applicant or licensee may deny or charge back only
 134 that portion of a warranty, maintenance, or other service-
 135 related claim or incentive claim which the applicant or licensee
 136 has proven to be false or fraudulent or for which the dealer
 137 failed to substantially comply with the reasonable, written, and
 138 uniformly applied procedures of the applicant or licensee for
 139 such repairs or incentives, as set forth in this subsection. An
 140 applicant or licensee may not charge ~~back~~ a motor vehicle dealer
 141 ~~baek~~ subsequent to the payment of a warranty, maintenance, or
 142 service-related claim or incentive claim unless, within 30 days
 143 after a timely conducted audit, a representative of the
 144 applicant or licensee first meets in person, by telephone, or by
 145 video teleconference with an officer or employee of the dealer

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146 designated by the motor vehicle dealer. At such meeting the
 147 applicant or licensee must provide a detailed explanation, with
 148 supporting documentation, as to the basis for each of the claims
 149 for which the applicant or licensee proposed a charge-back to
 150 the dealer and a written statement containing the basis upon
 151 which the motor vehicle dealer was selected for audit or review.
 152 Thereafter, the applicant or licensee must provide the motor
 153 vehicle dealer's representative a reasonable period after the
 154 meeting within which to respond to the proposed charge-backs,
 155 with such period to be commensurate with the volume of claims
 156 under consideration, but in no case less than 45 days after the
 157 meeting. The applicant or licensee is prohibited from changing
 158 or altering the basis for each of the proposed charge-backs as
 159 presented to the motor vehicle dealer's representative following
 160 the conclusion of the audit unless the applicant or licensee
 161 receives new information affecting the basis for one or more
 162 charge-backs and that new information is received within 30 days
 163 after the conclusion of the timely conducted audit. If the
 164 applicant or licensee claims the existence of new information,
 165 the dealer must be given the same right to a meeting and right
 166 to respond as when the charge-back was originally presented.
 167 After all internal dispute resolution processes provided through
 168 the applicant or licensee have been completed, the applicant or
 169 licensee shall give written notice to the motor vehicle dealer
 170 of the final amount of its proposed charge-back. If the dealer
 171 disputes that amount, the dealer may file a protest with the
 172 department within 30 days after receipt of the notice. If a
 173 protest is timely filed, the department shall notify the
 174 applicant or licensee of the filing of the protest, and the

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175 applicant or licensee may not take any action to recover the
 176 amount of the proposed charge-back until the department renders
 177 a final determination, which is not subject to further appeal,
 178 that the charge-back is in compliance with the provisions of
 179 this section. In any hearing pursuant to this subsection, the
 180 applicant or licensee has the burden of proof that its audit and
 181 resulting charge-back are in compliance with this subsection.

182 (26) Notwithstanding the terms of any franchise agreement,
 183 including any licensee's program, policy, or procedure, the
 184 applicant or licensee has refused to allocate, sell, or deliver
 185 motor vehicles; charged back or withheld payments or other
 186 things of value for which the dealer is otherwise eligible under
 187 a sales promotion, program, or contest; prevented a motor
 188 vehicle dealer from participating in any promotion, program, or
 189 contest; or has taken or threatened to take any adverse action
 190 against a dealer, including charge-backs, reducing vehicle
 191 allocations, or terminating or threatening to terminate a
 192 franchise because the dealer sold or leased a motor vehicle to a
 193 customer who exported the vehicle to a foreign country or who
 194 resold the vehicle, unless the licensee proves that the dealer
 195 knew or reasonably should have known that the customer intended
 196 to export or resell the motor vehicle. There is a rebuttable
 197 presumption that the dealer neither knew nor reasonably should
 198 have known of its customer's intent to export or resell the
 199 vehicle if the vehicle is titled or registered in any state in
 200 this country. A licensee may not take any action against a motor
 201 vehicle dealer, including reducing its allocations or supply of
 202 motor vehicles to the dealer, or charging back a dealer for an
 203 incentive payment previously paid, unless the licensee first

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204 meets in person, by telephone, or video conference with an
 205 officer or other designated employee of the dealer. At such
 206 meeting, the licensee must provide a detailed explanation, with
 207 supporting documentation, as to the basis for its claim that the
 208 dealer knew or reasonably should have known of the customer's
 209 intent to export or resell the motor vehicle. Thereafter, the
 210 motor vehicle dealer shall have a reasonable period,
 211 commensurate with the number of motor vehicles at issue, but not
 212 less than 15 days, to respond to the licensee's claims. If,
 213 following the dealer's response and completion of all internal
 214 dispute resolution processes provided through the applicant or
 215 licensee, the dispute remains unresolved, the dealer may file a
 216 protest with the department within 30 days after receipt of a
 217 written notice from the licensee that it still intends to take
 218 adverse action against the dealer with respect to the motor
 219 vehicles still at issue. If a protest is timely filed, the
 220 department shall notify the applicant or licensee of the filing
 221 of the protest, and the applicant or licensee may not take any
 222 action adverse to the dealer until the department renders a
 223 final determination, which is not subject to further appeal,
 224 that the licensee's proposed action is in compliance with the
 225 provisions of this subsection. In any hearing pursuant to this
 226 subsection, the applicant or licensee has the burden of proof on
 227 all issues raised by this subsection. In addition to the
 228 requirements, protections, and procedures set forth in this
 229 subsection, an applicant or licensee, by agreement, program,
 230 rule, policy, standard, or otherwise, may not take adverse
 231 action against a motor vehicle dealer, including, but not
 232 limited to, reducing allocations, product deliveries, or

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233 planning volumes, or imposing any penalty or charge-back,
 234 because a motor vehicle that was sold, leased, or delivered to a
 235 customer was resold or exported more than 120 days after it was
 236 delivered to the customer. If the applicant or licensee does not
 237 provide written notification to the motor vehicle dealer of such
 238 resale or export within 12 months after the date of the motor
 239 vehicle dealer's delivery of the vehicle to the customer, the
 240 motor vehicle dealer may not be subject to any adverse action.
 241 Notwithstanding the provisions of any franchise agreement,
 242 program, policy, or procedure, a motor vehicle dealer's
 243 franchise agreement may not be terminated, canceled,
 244 discontinued, or nonrenewed by an applicant or licensee on the
 245 basis of any act related to a customer's exporting or reselling
 246 of a motor vehicle, unless the applicant or licensee proves by
 247 clear and convincing evidence before a trier of fact that the
 248 motor vehicle dealer knowingly engaged in a pattern of conduct
 249 of selling to known exporters and that the majority owner, or if
 250 there is no majority owner, the person designated as the dealer-
 251 principal in the franchise agreement, had actual knowledge, at
 252 the time the motor vehicle was sold, leased, or delivered, that
 253 the customer intended to export or resell the motor vehicle.
 254 However, nothing herein shall prohibit a licensee from
 255 terminating or nonrenewing a motor vehicle dealer's franchise
 256 agreement for a pattern of conduct that includes fraud, or
 257 intentionally making false statements or documentation in
 258 connection with retail sales of motor vehicles that are
 259 exported.

260 (39) Notwithstanding the terms of any agreement, program,
 261 incentive, bonus, policy, or rule, the applicant or licensee

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262 fails to make any payment pursuant to any of the foregoing for
 263 any temporary replacement motor vehicle loaned, rented, or
 264 provided by a motor vehicle dealer to or for its service or
 265 repair customers, even if the temporary replacement motor
 266 vehicle has been leased, rented, titled, or registered to the
 267 motor vehicle dealer's rental or leasing division or an entity
 268 that is owned or controlled by the motor vehicle dealer,
 269 provided that the motor vehicle dealer or its rental or leasing
 270 division or entity complies with the written and uniformly
 271 enforced vehicle eligibility and use requirements specified by
 272 the applicant or licensee in its agreement, program, policy,
 273 bonus, incentive or rule relating to loaner vehicles.

274 (40) Notwithstanding the terms of any franchise agreement,
 275 the applicant or licensee has required or coerced, or attempted
 276 to require or coerce, a motor vehicle dealer to purchase goods
 277 or services from a vendor selected, identified, or designated by
 278 the applicant or licensee, or one of its parents, subsidiaries,
 279 divisions, or affiliates, by agreement, standard, policy,
 280 program, incentive provision, or otherwise, without making
 281 available to the motor vehicle dealer the option to obtain the
 282 goods or services of like kind, design, and quality from a
 283 vendor chosen by the motor vehicle dealer. If the motor vehicle
 284 dealer exercises such option, the dealer must provide written
 285 notice of its desire to use the alternative goods or services to
 286 the applicant or licensee, along with samples or clear
 287 descriptions of the alternative goods or services that the
 288 dealer desires to use. The licensee or applicant shall have the
 289 opportunity to evaluate the alternative good or service for up
 290 to 30 days and to provide its written consent to use said good

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291 or service; such consent may not be unreasonably withheld by the
 292 applicant or licensee. If the motor vehicle dealer does not
 293 receive a response from the applicant or licensee within 30
 294 days, consent to use the alternative goods or services shall be
 295 deemed granted. If a dealer using alternative goods or services
 296 complies with the terms of this subsection, the dealer shall
 297 qualify and be eligible for all benefits described in the
 298 agreement, standard, policy, program, incentive provision, or
 299 otherwise. As used in this subsection, the term "goods or
 300 services" is limited to such goods and services used to
 301 construct or renovate dealership facilities, or furniture and
 302 fixtures at the dealership facilities. The term does not
 303 include:

304 (a) Any intellectual property of the applicant or licensee
 305 relating to signage incorporating the applicant's or licensee's
 306 trademark or copyright, any facility or building materials
 307 bearing the applicant's or licensee's trademark;

308 (b) Any special tool and training as required by the
 309 licensee or applicant;

310 (c) Any part to be used in repairs under warranty
 311 obligations of an applicant or licensee;

312 (d) Any good or service paid for entirely by the applicant
 313 or licensee; or

314 (e) Any applicant's or licensee's design or architectural
 315 review service.

316 (41) (a) The applicant or licensee, by agreement, policy,
 317 program, standard, or otherwise, requires a motor vehicle
 318 dealer, directly or indirectly, to advance or pay for, or to
 319 reimburse the applicant or licensee for, any costs related to

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320 the creation, development, showing, or publication in any media
 321 of any advertisement for a motor vehicle; requires a motor
 322 vehicle dealer to participate in, contribute to, affiliate with,
 323 or join a dealer advertising or marketing group, fund, pool,
 324 association, or other entity; or takes or threatens to take any
 325 adverse action against a motor vehicle dealer that refuses to
 326 join or participate in such group, fund, pool, association, or
 327 other entity. As used in this subsection, the term "adverse
 328 action" includes, but is not limited to, reduction of
 329 allocations, charging fees for a licensee's or dealer's
 330 advertising or a marketing group's advertising or marketing,
 331 termination of or threatening to terminate the motor vehicle
 332 dealer's franchise, or reducing any incentive for which the
 333 motor vehicle dealer is eligible.

334 (b) An applicant or licensee requires a dealer to
 335 participate in, or precludes a number of its motor vehicle
 336 dealers in a designated market area from establishing, a
 337 voluntary motor vehicle dealer advertising or marketing group,
 338 fund, pool, association, or other entity. Except as provided in
 339 an agreement, if a motor vehicle dealer chooses to form an
 340 independent advertising or marketing group, the applicant or
 341 licensee is not required to fund such group.

342 (c) This subsection may not prohibit an applicant or
 343 licensee from offering advertising or promotional materials to a
 344 motor vehicle dealer for a fee or charge, as long as the use of
 345 such advertising or promotional materials is voluntary for the
 346 motor vehicle dealer.

347
 348 A motor vehicle dealer who can demonstrate that a violation of,

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349 or failure to comply with, any of the preceding provisions by an
350 applicant or licensee will or can adversely and pecuniarily
351 affect the complaining dealer, shall be entitled to pursue all
352 of the remedies, procedures, and rights of recovery available
353 under ss. 320.695 and 320.697.

354 Section 2. This act applies to all franchise agreements
355 entered into, renewed, or amended after October 1, 1988, except
356 and to the extent that such application impairs valid
357 contractual agreements in violation of the Florida Constitution
358 or the United States Constitution.

359 Section 3. This act shall take effect upon becoming a law.
360

①

THE FLORIDA SENATE APPEARANCE RECORD

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

SB 1048

Bill Number (if applicable)

Meeting Date _____

Topic Motor Vehicle Franchise Bill

Amendment Barcode (if applicable) _____

Name Laura Dooley

Job Title Director, State Affairs

Address 803 7th ST, NW
Street

Phone 202.326.5483

Washington, DC 20001
City State Zip

Email l.dooley@gmail.com

Speaking: For Against Information

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

Representing Alliance of Automobile Manufacturers

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.

(2)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1048
Bill Number (if applicable)

Meeting Date

Topic AUTO DEALER FRANCHISE

Amendment Barcode (if applicable)

Name JEFF PERRY

Job Title DIRECTOR, STATE GOVERNMENT AFFAIRS

Address 300 RENAISSANCE DRIVE

Phone 313 667 0946

Street

DETROIT
City

MI
State

48236
Zip

Email Jeffrey.Perry@gm.com

Speaking: For Against Information

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

Representing General Motors

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)

4/15/2015
Meeting Date

SB 1048
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID LEIBOWITZ

Job Title ASST. SECRETARY, BRAMAN ~~ASSOCIATION~~ AUTOMOTIVE GROUP

Address 2060 RISCAYNE BLVD.

Phone _____

MEANS, FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing BRAMAN MANAGEMENT ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

1048
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson

Phone 850-224-3427

TLH 32301
City State Zip

Email Ron@RLBookAt.com

Speaking: For Against Information

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

Representing AutoNation

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.

⑨

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 5, 2015
Meeting Date

RS/SS/SB1048
Bill Number (if applicable)

Topic Motor Vehicle Franchise Agreements

Amendment Barcode (if applicable)

Name DIANE CHAN

Job Title Attorney / Hopingdreams.com

Address 119 S Monroe
Street

Phone 850.222.7500

Tallahassee, FL 32303
City State Zip

Email dchan@hopingdreams.com

Speaking: For Against Information

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

Representing Alliance of Automobile Manufacturers

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.

3

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-15

Meeting Date

SB 1048

Bill Number (if applicable)

Topic FRANCHISE

Amendment Barcode (if applicable)

Name Misti Rice

Job Title SENIOR MANAGER STATE AFFAIRS

Address 1000 Chrysler Dr
Street

Phone 918-899-1623

Auburn Hills MI
City State Zip

Email Misti.Rice@FCAGroup.com

Speaking: For Against Information

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

Representing Fiat Chrysler Automobiles

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
State Senator René García
38th District

Please reply to:
District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

April 2, 2015

The Honorable Senator David Simmons
Chair, Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons:

This letter should serve as a request to have my bill SB 1048: Motor Vehicle Manufacturer Licenses heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38
RG:JT

CC: John Phelps, Staff Director

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 Rules

BILL: SB 1078

INTRODUCER: Senator Sobel

SUBJECT: Lewd and Lascivious Behavior

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Sumner</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1078 repeals s. 798.02, F.S., which makes it a second degree misdemeanor for:

- An unmarried man and a woman to lewdly and lasciviously associate and cohabit together, or
- Any man or woman, married or unmarried to engage in open and gross lewdness and lascivious behavior.

By repealing s. 798.02, F.S., the bill removes cross-references that would have potentially disqualified from visitation a parent, caretaker, or grandparent of a child under the jurisdiction of the Department of Children and Families or disqualified from employment an applicant or employee criminally charged with a violation of the statute.

II. Present Situation:

Cohabitation Law in Florida

Florida law makes it a second degree misdemeanor¹ for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior.² This law, originally enacted in 1868, made the crime of cohabitation punishable by up to 2 years in prison, up to 1 year in the county jail, or up to a \$300 fine.³ Somewhat similarly, s. 800.02, F.S., makes it a second degree misdemeanor for a person to engage in any unnatural and lascivious act with another person.

Section 798.02, F.S., is cross-referenced in three other statutes.

¹ Second degree misdemeanors are punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

² Section 798.02, F.S.

³ Chapter 71-136 s. 773, L.O.F.

Section 39.0139, F.S., addresses visitation with children who are under the jurisdiction of the Department of Children and Families. A rebuttable presumption of detriment applies to a parent or caregiver who has been found guilty or who has entered a plea to certain crimes including cohabitation.⁴

Section 39.509, F.S., provides visitation rights to grandparents who qualify. In determining whether grandparent visitation is in the best interest of the child, the court may consider if a grandparent has been found guilty or who has entered a plea to certain crimes including cohabitation.⁵

Screening of employees for criminal backgrounds is provided in ch, 435, F.S. Screenings for Level 2 background checks screen for certain crimes including cohabitation.⁶

Cohabitation Law in other States

According to the National Conference of State Legislatures only three states, Florida, Michigan, and Mississippi, make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.⁷

States with Cohabitation Laws other than Florida

State	Statute	Language
Michigan	MCLA § 750.335	Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

The following states have repealed laws which made cohabitation illegal: Arizona, Idaho, Maine, New Mexico, North Carolina, North Dakota, Virginia, and West Virginia.

⁴ Section 39.0139(3)(a)2., F.S.

⁵ Section 39.509(6)(a), F.S.

⁶ Section 435.04(2)(w), F.S.

⁷ E-mail from staff of the National Conference of State Legislatures (Mar. 11, 2015) (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

The bill repeals the law that made it a second degree misdemeanor for an unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engage in open and gross lewdness and lascivious behavior.

The bill repeals a statute that prohibits:

- A man and a woman who are not married to each other from lewdly and lasciviously associating and cohabiting together; or
- A man and a woman, regardless of marital status, from engaging in open and gross lewdness and lascivious behavior.

Under existing law, a person who violates one of the prohibitions above is subject to the penalties for a second degree misdemeanor.

By repealing the prohibition on cohabitation and open lewd and lascivious behavior, the bill removes cross-references that would have potentially disqualified from visitation a parent, caretaker, or grandparent of a child under the jurisdiction of the Department of Children and Families or disqualified from employment an applicant or employee criminally charged with a violation of the cohabitation law.

The bill takes effect July 1, 2015.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.0139, 39.509, and 435.04.

This bill repeals section 798.02, 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 Sobel

33-01255-15

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1 A bill to be entitled
 2 An act relating to lewd and lascivious behavior;
 3 repealing s. 798.02, F.S., relating to a prohibition
 4 on lewd and lascivious behavior, including a
 5 prohibition on lewd and lascivious association and
 6 cohabitation together by a man and woman who are not
 7 married to each other; amending ss. 39.0139, 39.509,
 8 and 435.04, F.S.; conforming provisions to changes
 9 made by the act; providing an effective date.

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

11 Section 1. Section 798.02, Florida Statutes, is repealed.
 12 Section 2. Paragraph (a) of subsection (3) of section
 13 39.0139, Florida Statutes, is amended to read:
 14 39.0139 Visitation or other contact; restrictions.—
 15 (3) PRESUMPTION OF DETRIMENT.—
 16 (a) A rebuttable presumption of detriment to a child is
 17 created when:
 18 1. A court of competent jurisdiction has found probable
 19 cause exists that a parent or caregiver has sexually abused a
 20 child as defined in s. 39.01;
 21 2. A parent or caregiver has been found guilty of,
 22 regardless of adjudication, or has entered a plea of guilty or
 23 nolo contendere to, charges under the following statutes or
 24 substantially similar statutes of other jurisdictions:
 25 a. Section 787.04, relating to removing minors from the
 26 state or concealing minors contrary to court order;
 27 b. Section 794.011, relating to sexual battery;

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

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30 ~~e. Section 798.02, relating to lewd and lascivious~~
 31 ~~behavior;~~
 32 ~~c.d.~~ Chapter 800, relating to lewdness and indecent
 33 exposure;
 34 ~~d.e.~~ Section 826.04, relating to incest; or
 35 ~~e.f.~~ Chapter 827, relating to the abuse of children; or
 36 3. A court of competent jurisdiction has determined a
 37 parent or caregiver to be a sexual predator as defined in s.
 38 775.21 or a parent or caregiver has received a substantially
 39 similar designation under laws of another jurisdiction.
 40 Section 3. Paragraph (a) of subsection (6) of section
 41 39.509, Florida Statutes, is amended to read:
 42 39.509 Grandparents rights.—Notwithstanding any other
 43 provision of law, a maternal or paternal grandparent as well as
 44 a stepgrandparent is entitled to reasonable visitation with his
 45 or her grandchild who has been adjudicated a dependent child and
 46 taken from the physical custody of the parent unless the court
 47 finds that such visitation is not in the best interest of the
 48 child or that such visitation would interfere with the goals of
 49 the case plan. Reasonable visitation may be unsupervised and,
 50 where appropriate and feasible, may be frequent and continuing.
 51 Any order for visitation or other contact must conform to the
 52 provisions of s. 39.0139.
 53 (6) In determining whether grandparental visitation is not
 54 in the child's best interest, consideration may be given to the
 55 following:
 56 (a) The finding of guilt, regardless of adjudication, or
 57 entry or plea of guilty or nolo contendere to charges under the
 58 following statutes, or similar statutes of other jurisdictions:

Page 2 of 3

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

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59 s. 787.04, relating to removing minors from the state or
60 concealing minors contrary to court order; s. 794.011, relating
61 to sexual battery; ~~s. 798.02, relating to lewd and lascivious~~
62 ~~behavior~~; chapter 800, relating to lewdness and indecent
63 exposure; s. 826.04, relating to incest; or chapter 827,
64 relating to the abuse of children.

65 Section 4. Present paragraphs (x) through (zz) of
66 subsection (2) of section 435.04, Florida Statutes, are
67 redesignated as paragraphs (w) through (yy), respectively, and
68 paragraph (w) of subsection (2) of that section, is amended to
69 read:

70 435.04 Level 2 screening standards.—

71 (2) The security background investigations under this
72 section must ensure that no persons subject to the provisions of
73 this section have been arrested for and are awaiting final
74 disposition of, have been found guilty of, regardless of
75 adjudication, or entered a plea of nolo contendere or guilty to,
76 or have been adjudicated delinquent and the record has not been
77 sealed or expunged for, any offense prohibited under any of the
78 following provisions of state law or similar law of another
79 jurisdiction:

80 ~~(w) Section 798.02, relating to lewd and lascivious~~
81 ~~behavior.~~

82 Section 5. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 1078

Bill Number (if applicable)

Topic Lewd, Lascivious Behavior

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise

Street

Phone

Largo

FL

33773

City

State

Zip

Email

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

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

Representing Saving Florida Families

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

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Health Policy, *Vice Chair*
Agriculture
Education Pre-K-12
Appropriations Subcommittee on Health
and Human Services

SENATOR ELEANOR SOBEL

33rd District

April 1, 2015

Senator David Simmons
Chair of the Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Simmons,

This letter is to request that **SB 1078** relating to **the repeal of cohabitation laws** be placed on the agenda of the next scheduled meeting of the Committee on Rules.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel
State Senator, 33rd District

Cc: John Phelps, Cissy Dubose

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 524

INTRODUCER: Rules Committee; Banking and Insurance Committee; and Senator Soto

SUBJECT: Rental Agreements

DATE: April 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 524 allows a purchaser of foreclosed property occupied by a tenant to provide notice to the tenant that has the effect of terminating the rental agreement upon delivery of the notice and terminating the occupancy of the tenant 30 days after the notice is delivered. The bill allows the tenant to remain in possession of the property for 30 days following the receipt of the notice. The new owner may collect rent during the 30 day occupancy and may not engage in prohibited practices under s. 83.67, F.S., such as terminating utilities, or preventing the tenant from having access to the property. However, a lender that forecloses on a residential premises occupied by a tenant does not assume the obligations of a landlord unless the lender and the tenant enter into a new rental agreement.

The bill takes effect upon becoming law.

II. Present Situation:

Foreclosure Crisis

Starting in 2007, the Great Recession fueled a multiple-year foreclosure crisis in the United States. Between 2007 and 2009, lenders initiated approximately 6.4 million home foreclosures.¹

¹ Lauren E. Willis, *Introduction: Why didn't the Courts Stop the Mortgage Crisis?* 43 LOY. L.A. L. REV. 1195, 1195 (2010).

By the end of 2010, more than 5 million homes had been foreclosed upon, representing about 10 percent of all homes having a mortgage.²

The foreclosure crisis took place in three waves. The first wave was triggered by the Great Recession along with defaults on subprime loans.³ The second wave of properties foreclosed upon were due to the increase in interest rates on adjustable-rate mortgages. And the third phase was caused by homeowners who had been keeping current on payments simply walking away from the property due to sustained loss in property values.⁴

Throughout the national foreclosure crisis, Florida consistently remained at the top of the states in numbers of foreclosed properties. As of 2009, Florida had the third highest mortgage delinquency rate, the greatest inventory of foreclosed properties, and the most foreclosure starts of any state.⁵ By 2011, at 23 percent, Florida led the nation in the highest rate of homes either in foreclosure or delinquent on mortgage payments.⁶

Foreclosure cases flooded the courts. In response, the Florida Supreme Court created the “Task Force on Residential Mortgage Foreclosure Cases.”⁷ One of the recommendations of the task force was to require mediation for foreclosure on residential properties.⁸ The Florida Supreme Court ended the mediation program in 2011.⁹ Still, the number of foreclosure cases in the state continues to outpace the nation in both actual number of properties and the highest percentage of mortgages in foreclosure.¹⁰

Protecting Tenants at Foreclosure Act¹¹

In the early years of the foreclosure crisis, tenants were routinely evicted with little or no notice or recourse. In foreclosure proceedings, all subordinate leases and interests, including rental agreements, are extinguished when the court issues a certificate of title in a foreclosure action.¹² The interests in property are extinguished in foreclosure actions because both possession and title to property are at issue and the tenants can be joined as parties.¹³ Thus, after a foreclosure sale, the relationship between the new property owner and the tenant is that of owner and trespasser.¹⁴

In 2009, Congress passed the Protecting Tenants at Foreclosure Act (PTFA), which expired December 31, 2014. The PTFA gave protection to tenants during foreclosure. The PTFA

² Tony S. Guo, *Tenants at Foreclosure: Mitigating Harm to Innocent Victims of the Foreclosure Crisis*, 4 DEPAUL J. FOR SOC. JUST. 215, 216 (2011).

³ Subprime mortgages are mortgages offered to borrowers with less than optimal credit at higher interest rates. *Id.* at 222.

⁴ Kevin F. Jursinski, *The Mortgage Foreclosure Crisis in Florida: a 21st Century Solution*, 84 FLA. B.J. 91, 91 (June 2010).

⁵ *In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, 2009 WL 5227471 (Fla. 2009).

⁶ Tony S. Guo, *supra* note 2, at 216.

⁷ *In re: Task Force on Residential Mortgage Foreclosure Cases*, AOSC09-8 (March 27, 2009).

⁸ *In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, AOSC09-54 (December 28, 2009).

⁹ “After the date of this order, no new cases may be referred to mediation pursuant to the statewide managed mediation program.” *In re: Managed Mediation Program for Residential Mortgage Foreclosure Cases*, AOSC11-44 (December 19, 2011).

¹⁰ *Years to Go Before Foreclosures Return to ‘Normal’*, THE FLA. BAR NEWS pg. 11 (March 1, 2015).

¹¹ 12 U.S.C. s. 5220.

¹² Tony S. Guo, *supra* note 2, at 217.

¹³ *Redding v. Stockton, Whatley, Davin & Co.* 488 So. 2d 548, 549 (Fla. 5th DCA 1986).

¹⁴ *Id.*

required the successor in interest of the foreclosed property (typically the purchaser) to give tenants a notice to vacate the residence at least 90 days before the purchaser intends to occupy the residence. In situations in which a lease existed and the purchaser did not intend to occupy the residence, the tenant could stay until the end of the lease.

The Act required notice to be given only to bona fide tenants, which meant:

- The tenant could not be the mortgagor or the child, spouse, or parent of the mortgagor;
- The lease resulted from an arms-length transaction; and
- The rent was not substantially less than the fair market rent for the property unless it was reduced by a federal, state, or local subsidy.

The party seeking foreclosure must join a tenant as a party to extinguish a tenant's lease.¹⁵ Serving tenants is advantageous to the party seeking foreclosure as the writ of possession is granted at the same proceeding, and the purchaser does not need to pursue separate legal action against the tenant.¹⁶ At the foreclosure proceeding in which a lessee is named as a party, courts issue a writ of possession upon a simple showing by the purchaser of ownership in the property.¹⁷ However, sometimes a tenant rents a property subsequent to the start of foreclosure proceedings. In these instances, the tenant may not have advance notice that the property is under foreclosure. Also, the purchaser of the foreclosed property may not have notice of the tenant's occupancy or rental agreement.

The PTFA ensures that an unaware tenant receives notice that the property in which they reside is a foreclosed property. In 2010, the Florida Supreme Court amended Form 1.996(a) to ensure that courts complied with the PTFA:

in order to ensure that the provisions of the form are not contrary to the Protecting Tenants at Foreclosure Act of 2009 ... we delete the sentence from paragraph six of the form stating, "If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title."¹⁸

At least one circuit court in Florida adopted by administrative order language that required the petitioner in a motion for writ of possession to conform to the PTFA:

I HEREBY CERTIFY that there are no tenants in possession of the subject property or, if there are tenants in possession, such tenants have been provided with notice as required by the Federal Protecting Tenants at Foreclosure Act ... and this motion does not seek an order that violates the tenants' right to continued occupancy under the Federal Protecting Tenants at Foreclosure Act.¹⁹

¹⁵ *Dundee Naval Stores Co. v. McDowell*, 61 So. 108 (Fla. 1913); *Commercial Laundries of West Florida, Inc. v. Tiffany Square Investors Ltd. Partnership*, 605 So. 2d 116 (Fla. 5th DCA 1992); *Commercial Laundries, Inc., v. Golf Course Towers Associates*, 568 So.2d 501 (Fla. 3d DCA 1990).

¹⁶ *Redding v. Stockton, Whatley, Davin, & Co.*, 488 So. 2d 548, 549 (Fla. 5th DCA 1986). (Foreclosure is a case in equity, and a writ of possession is ancillary to it.).

¹⁷ *Id.*

¹⁸ *In re: Amendments to Fla.R.Civ.P. Form 1.996*, 51 So. 3d 1140 (Fla. 2010).

¹⁹ Administrative Order 3.307 – 7/09 (Fla. 15th Circ. Ct. 2009).

The PTFA expired December 31, 2014.

III. Effect of Proposed Changes:

This bill allows a purchaser of foreclosed property occupied by a tenant to provide notice to the tenant that has the effect of terminating the rental agreement upon delivery of the notice and terminating the occupancy of the tenant 30 days after the notice is delivered. The bill allows the tenant to remain in possession of the property for 30 days after the receipt of the notice. The bill provides a form for the notice. The notice must be provided by mail or delivery to the residence, as required by s. 83.56(4), F.S. The new owner may collect rent for the time the tenant occupies the property. The bill allows the new owner to file a writ of possession with a court for any tenant who fails to vacate the premises by the 30th day after the notice is given.

The bill provides the tenant the protections of s. 83.67, F.S., which prohibit the new owner from conduct such as interrupting utility services or preventing the tenant from having access to the premise during the 30 days following the delivery of the notice. Once the rental agreement is void, none of the other protections of part II of ch. 83, F.S., the Florida Residential Landlord and Tenant Act apply. Similarly, the bill expressly provides that a foreclosing lender does not assume the obligations of a landlord unless the lender and the tenant enter into a new rental agreement.

The bill allows the new owner the ability to honor the existing rental agreement in which case the owner would become the landlord and part II of ch. 83, F.S., Florida Residential Landlord and Tenant Act, would apply.

As was the case under the federal Protecting Tenants at Foreclosure Act, the notice requirement of the bill does not apply if:

- The tenant is the mortgagor or the child, spouse, or parent of the mortgagor;
- The lease did not result from an arms-length transaction; and
- The rental agreement allowed the tenant to pay rent that was substantially less than the fair market rent for the property unless it was reduced by a federal, state, or local subsidy.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The lack of information about lessees who occupy a property before the issuance of a certificate of title after a foreclosure sale may create uncertainty that affects the selling price at a foreclosure sale. If this lack of information depresses the price of a property at a foreclosure sale, the mortgagor may potentially face a larger deficiency judgment. This uncertainty may also affect the ability of a foreclosing lender to resell a property it acquires at a foreclosure sale. However, a purchaser may be willing to pay more for a property that is occupied by a tenant who has a history of making rental payments on-time.

The new owner of the property will assume all liability during the time the tenant is allowed to remain. The owner may need to purchase an insurance policy that covers liability of an occupied rental in order to insure against such risk.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the guidance provided by the bill will increase the efficiency of the courts. However, OSCA is not able to accurately determine the fiscal impact of the bill because of the unavailability of necessary data.²⁰

VI. Technical Deficiencies:

The notice required by the bill provides notice that the rental agreement is void upon the notice being received. The bill, however, does not contain a provision outside of the notice allowing the rental agreement to be terminated upon proper delivery of the notice.

The form “Notice to Tenant of Termination” provides a blank for the insertion of the “landlord’s name and address.” However, a person who acquires a property at a foreclosure sale does not appear to have a landlord-tenant relationship with a tenant who occupies the foreclosed property. As such, the Legislature may wish to revise the form to refer to the “property owner’s” name and address.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.561 of the Florida Statutes.

²⁰ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 13, 2015).

IX. Additional Information:

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

CS/CS by Rules on April 15, 2015:

The CS adds a provision to the underlying bill which expressly provides that a foreclosing lender on a residential premises does not assume the obligations of a landlord unless the lender and the occupant enter into a new rental agreement.

CS by Banking and Insurance on April 7, 2015:

The CS makes the following changes:

- Allows a 30 day notice to vacate may be provided to tenants of foreclosed properties that were recently purchased and title had been transferred.
- Voids the original rental agreement at time of notice and specifies only limited sections of part II of ch. 83, F.S., Florida Residential Landlord and Tenant Act shall apply.
- Allows the new owner to file a writ of possession with the courts for any tenant that fails to vacate the premises after the 30th day from when notice was given.
- Allows the new owner to honor the original rental agreement and become the landlord in which case all of part II of ch. 83, F.S., Florida Residential Landlord and Tenant Act shall apply.

- B. **Amendments:**

None.



671292

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment (with title amendment)

Between lines 67 and 68
insert:

(5) A lender foreclosing on residential premises occupied
by a tenant does not assume the obligations of a landlord unless
and until the lender and the tenant enter into a new rental
agreement.

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

And the title is amended as follows:



671292

12 Delete line 14
13 and insert:
14 construction; providing that a lender foreclosing on
15 tenant-occupied residential premises does not assume
16 the obligations of a landlord unless certain
17 conditions are met; providing an effective date.

By the Committee on Banking and Insurance; and Senator Soto

597-03622-15

2015524c1

1 A bill to be entitled
 2 An act relating to rental agreements; creating s.
 3 83.561, F.S.; providing that a purchaser takes title
 4 to a tenant-occupied residential property following a
 5 foreclosure sale subject to the rights of the tenant;
 6 specifying the rights of the tenant; authorizing a
 7 tenant to remain in possession of the property for 30
 8 days following receipt of a written notice;
 9 prescribing the form for a 30-day notice of
 10 termination; establishing requirements for delivery of
 11 the notice; authorizing a purchaser to apply for a
 12 writ of possession if the tenant refuses to vacate the
 13 property; providing exceptions; providing for
 14 construction; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 83.561, Florida Statutes, is created to
 19 read:

20 83.561 Termination of rental agreement upon foreclosure.-

21 (1) If a tenant is occupying residential premises that are
 22 the subject of a foreclosure sale, upon issuance of a
 23 certificate of title following the sale, the purchaser named in
 24 the certificate of title takes title to the residential premises
 25 subject to the rights of the tenant under this section.

26 (a) The tenant may remain in possession of the premises for
 27 30 days following the date of the purchaser's delivery of a
 28 written 30-day notice of termination.

29 (b) The tenant is entitled to the protections of s. 83.67.

Page 1 of 3

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

597-03622-15

2015524c1

30 (c) The 30-day notice of termination must be in
 31 substantially the following form:

32
 33 NOTICE TO TENANT OF TERMINATION

34
 35 You are hereby notified that your rental agreement is
 36 terminated on the date of delivery of this notice and your
 37 occupancy is terminated 30 days following the date of the
 38 delivery of this notice and that I demand possession of the
 39 premises on that ...(date)... If you do not vacate the premises
 40 by this date, I will ask the court for an order allowing me to
 41 remove you and your belongings from the premises. You are
 42 obligated to pay rent during the 30-day period for any amount
 43 that might accrue during that period. Your rent must be
 44 delivered to ...(landlord's name and address)...

45
 46 (d) The 30-day notice of termination shall be delivered in
 47 the same manner as provided in s. 83.56(4).

48 (2) The purchaser at the foreclosure sale may apply to the
 49 court for a writ of possession based upon a sworn affidavit that
 50 the 30-day notice of termination was delivered to the tenant and
 51 the tenant has failed to vacate the premises at the conclusion
 52 of the 30-day period. If the court awards the writ of
 53 possession, the writ must be served on the tenant. The writ of
 54 possession shall be governed by s. 83.62.

55 (3) This section does not apply if:

56 (a) The tenant is the mortgagor in the subject foreclosure
 57 or is the child, spouse, or parent of the mortgagor in the
 58 subject foreclosure.

Page 2 of 3

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

597-03622-15

2015524c1

59 (b) The tenant's rental agreement is not the result of an
60 arm's length transaction.

61 (c) The tenant's rental agreement allows the tenant to pay
62 rent that is substantially less than the fair market rent for
63 the premises, unless the rent is reduced or subsidized due to a
64 federal, state, or local subsidy.

65 (4) This section does not preclude the purchaser from
66 assuming the prior rental agreement of the tenant, in which case
67 the purchaser becomes the landlord and is governed by this part.

68 Section 2. 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)

4-15-15

Meeting Date

524

Bill Number (if applicable)

671292

Amendment Barcode (if applicable)

Topic Rental Agreements

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Street

Phone 850-224-2265

Tallahassee

City

FL

State

32303

Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

524

Bill Number (if applicable)

Topic Rental Agreements

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne BLVD, #102

Phone 850-509-2085

Street

Miami

FL

33137

City

State

Zip

Email arthur@floridalegal.org

Speaking: For Against Information

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

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

4/15/15
Meeting Date

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

524
Bill Number (if applicable)

Topic Rental Agreements

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee FL

32303

Email alicevickers@

City State Zip

flacp.org

Speaking: For Against Information

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

Representing FL Alliance for Consumer Protection

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)

4-15-15

Meeting Date

524

Bill Number (if applicable)

Topic Rental Agreements

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Phone 850-224-2265

Street

Tallahassee

City

FL

State

32303

Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Democratic Caucus Rules Chair
14th District

April 8, 2015

The Honorable David Simmons
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Simmons,

I respectfully request that Senate Bill 524, Rental Agreements, be placed on the agenda as soon as possible. Senate Bill 524 provides that a tenant who is occupying a property that is sold as a foreclosure has the right to occupy the property until the end of the term of the rental agreement or at least 90 days after the purchaser delivers written notice of the termination of the tenancy to the tenant.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: John Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 1324

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; Criminal Justice Committee and Senator Latvala

SUBJECT: Public Records/Agency Personnel Information

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1324 creates and expands exemptions from the Public Records laws for personal identifying and location information of the commissioners of the Florida Commission on Offender Review, public defenders, conflict counsel, capital collateral counsel, prosecutors, law enforcement officers, and other investigatory personnel, as well as their siblings, parents, and cohabitants.

The information that is exempted for the commissioners, attorneys, law enforcement officers, and other personnel is expanded to include:

- Residential addresses;
- Personal e-mail addresses;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of the commissioners, attorneys, officers, and personnel are exempt under the bill.

The bill creates an exemption for the home address, telephone number, dates of birth as well as other identifying information for the spouses and children of capital collateral regional counsel,

their assistant counsel, and the commissioners and certain personnel of the Florida Commission on Offender Review.

The public necessity for the bill is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person.

The bill requires a two-thirds vote of the members present and voting for final passage of a newly created and expanded public record exemption.

The bill becomes effective on July 1, 2015. The exemptions created by the bill will be repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

II. Present Situation:

Threats to and Harassment of Law Enforcement and Other Government Personnel

Events that occur in people's lives as a result of criminal cases or civil actions involving alleged child abuse or neglect, for example, tend to raise anxiety or anger. Law enforcement officers and others who work in and around the court system sometimes find that they are targeted for violence, threats, and different forms of harassment by people they come into contact with in these volatile situations.

In recent years, law enforcement has become aware of a loosely organized group of people referred to as "sovereign citizens." According to reports, the group believes the government has no authority over them. A September 2011 FBI Law Enforcement Bulletin reported that since 2000, lone-offender "sovereign citizen extremists" have killed six law enforcement officers.¹ A recent Homeland Security intelligence assessment, produced in coordination with the FBI, counts 24 violent attacks related to the sovereign citizen movement. Because law enforcement officers and other government authority figures enforce the laws and regulations, the report indicates that they will remain the primary target of violence by this extremist group.²

The murders of an assistant district attorney as he walked to the courthouse, and just a few weeks later, the District Attorney and his wife in their home in Kaufman County, Texas shocked the community in 2013. Reports indicate that the killings were planned and carried out by a local public official as revenge for his prosecution for theft of public property.³

In 2011, one man was sentenced to 30 months in prison after pleading guilty to filing false liens against federal law enforcement employees in Florida. His targets were people involved in investigating and prosecuting him for tax fraud. He filed false liens against the property of the

¹ Federal Bureau of Investigation Law Enforcement Bulletin, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, September 2011. <http://leb.fbi.gov/2011/september> (site visited March 18, 2015).

² <http://www.cnn.com/2015/02/19/politics/terror-threat-homeland-security/> (site visited March 19, 2015).

³ <http://crimeblog.dallasnews.com/2013/05/suspect-in-kaufman-county-da-murders-waives-oral-arguments-in-appeal-of-case-law-enforcement-cites-as-motive-for-killings.html/>

prosecutors, investigators, and court personnel falsely claiming that he was owed \$48,489 billion from each individual.⁴

A Tallahassee man first met Officer Annette Garrett in April 2007 during a trespass investigation that lasted until May 2007.⁵ According to court documents, the man found Officer Garrett to be very rude, abusive, and unprofessional during the investigation.⁶ He filed several complaints with the Tallahassee Police Department regarding Officer Garrett's conduct.⁷ He was not satisfied with the department's response to his complaints.⁸ In 2008, the man posted personal information about Officer Garrett on a website, Ratemycop.com.⁹ The information about the officer was publicly available. The information posted on the website included the officer's marital status, number of children, home address, estimated value of her home, cell phone number, and e-mail address.¹⁰

Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹¹ The records of the legislative, executive, and judicial branches are specifically included in the Constitution.¹²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹³ guarantees every person's right to inspect and copy any state or local government public record¹⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁵

⁴ See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited March 20, 2015).

⁵ Taken from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ A privately owned company in Los Angeles, California, that "allows registered users to leave written feedback about their interactions with police officers, and rank the officer's service based on three criteria: Professionalism, Fairness and Satisfaction." See http://ratemycop.com/index.php?option=com_content&task=view&id=58&Itemid=148; from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373

¹⁰ *Id.*

¹¹ FLA. CONST., art. I, s. 24(a).

¹² *Id.*

¹³ Chapter 119, F.S.

¹⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla.1992).

¹⁵ Section 119.07(1)(a), F.S.

Only the Legislature may create an exemption to public records requirements.¹⁶ This exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²³
- 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;²⁴ or
- It protects trade or business secrets.²⁵

¹⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla.2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. Attorney General Opinion 85-62, (August 1, 1985).

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ However, the bill may contain multiple exemptions that relate to one subject.

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ Section 119.15(6)(b)1., F.S.

²⁴ Section 119.15(6)(b)2., F.S.

²⁵ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁸

Statutory Exemptions from Public Records Law

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule.

Among the general exemptions set forth in s. 119.071, F.S., are exemptions for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the following persons:

- Active or former sworn or civilian law enforcement officers, including correctional and correctional probation officers;
- Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect;
- Personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement;
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and
- Current or former public defenders, criminal conflict and civil regional counsel and their assistants.

The information exempted also includes the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the persons' spouses and children, as well as the names and locations of schools and day care facilities attended by those persons' children.²⁹

²⁶ 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?

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ Section 119.15(7), F.S.

²⁹ s. 119.071(4)(d)2.a., d., and j., F.S.

The commissioners and personnel of the Florida Commission on Offender Review, and capital collateral regional counsel and assistant capital collateral regional counsel are not subject to any public records exemptions, unlike public defenders, assistant public defenders, criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel. Therefore, the home addresses, telephone numbers, dates of birth and photographs of current or former capital collateral regional counsel and assistant capital collateral regional counsel, and commissioners and personnel of the Florida Commission on Offender Review are currently public record. In addition, the home address, telephone number, dates of birth and places of employment of the spouses and children of those persons are public.

III. Effect of Proposed Changes:

This bill creates a public records exemption for capital collateral regional counsel and assistant capital collateral regional counsel as well as the commissioners and investigating and decision-making personnel of the Florida Commission on Offender Review by adding those positions to the existing public record exemption for public defenders, assistant public defenders, criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel. The information made exempt for this group of commissioners, commission personnel, and attorneys includes: home addresses, telephone numbers, dates of birth, and photographs of the attorneys; home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of the commissioner, commission personnel, or attorney; and the location of the schools and day care facilities attended by the children of the commissioner, commission personnel, or attorney.

The bill amends s. 119.071(4)(d)2.a., d., and j., F.S., to expand and create the following public records exemptions relating to the officers and personnel listed above, including the commissioners and investigating and decision-making personnel of the Florida Commission on Offender Review, capital collateral regional counsel and assistant capital collateral regional counsel:

- Residential addresses;
- Personal e-mail addresses;
- License plate numbers; and
- Banking and financial information.

Additionally, this bill creates exemptions for the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those commissioners, officers, and personnel.

The bill provides a retroactivity clause.

The bill also provides a statement of public necessity for the exemptions. The public necessity statement states that the Legislature finds that the commissioners and investigating and decision-making personnel of the Florida Commission on Offender Review, capital collateral regional counsel and assistant capital collateral regional counsel should be given the same protections as other similar attorneys, officers, or personnel, and that they are in danger of harm from disgruntled individuals. The Legislature also finds that it is a public necessity to expand the information related to current personnel and officers as well as creating new exemptions for their

families and cohabitants. The specific finding relevant to the public necessity is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person. The bill states that the Legislature further finds that the harm that may result from the release of the identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

All of the above exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates new public record exemptions and expands an existing exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates and expands public record exemptions; thus, it includes a public necessity statement which provides that the affected individuals are in danger of physical and emotional harm.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. These exemptions are no broader than necessary to accomplish their stated purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Agencies will have to train their staff on the new exemptions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

CS/CS/CS by Rules on April 15, 2015:

- The CS adds the commissioners and investigating or decision-making personnel of the Florida Commission on Offender Review and their families to the list of persons who have their personal identifying information exempt from public records.
- The CS conforms the public necessity statement.

CS/CS by Governmental Oversight and Accountability on April 7, 2015:

- The CS added capital collateral regional counsel and their assistants and families to the list of criminal and civil attorneys who have their identifying information exempt from public records.
- The CS removes references to former residential addresses, residences in which a person frequently resides other than his or her home address, driver's license numbers and social security numbers.
- The CS clarified that personal email addresses were exempt.
- The CS provides for retroactive application of the exemptions.
- The CS conforms the public necessity statement.

CS by Criminal Justice on March 30, 2015:

- The CS exempts from public records the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel. The

home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of their parents, siblings, or cohabitants are also made exempt by the CS.

- The statement of public necessity reflects the inclusion of the information listed above for the public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel and their assistants.
- References to information identifying former places of employment are eliminated by the CS.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 332

and insert:

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers; IT personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; IT personnel of the Department of



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12 Health whose duties are to support the investigation of child
13 abuse or neglect; ~~and~~ personnel of the Department of Revenue or
14 local governments whose responsibilities include revenue
15 collection and enforcement or child support enforcement; and
16 commissioners of the Florida Commission on Offender Review, and
17 the personnel of the commission whose duties include making
18 final decisions on holding a hearing for, or investigating
19 violations of, post-incarceration supervised release; the home
20 addresses, telephone numbers, social security numbers,
21 photographs, dates of birth, and places of employment of the
22 spouses and children of such personnel; and the names and
23 locations of schools and day care facilities attended by the
24 children of such personnel are exempt from s. 119.07(1) and s.
25 24(a), Art. I of the State Constitution. This sub-sub-
26 subparagraph is subject to the Open Government Sunset Review Act
27 in accordance with s. 119.15 and shall stand repealed on October
28 2, 2020, unless reviewed and saved from repeal through
29 reenactment by the Legislature.

30 (II) The names of the spouses and children of active or
31 former sworn or civilian law enforcement personnel and the other
32 specified agency personnel identified in sub-sub-subparagraph
33 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
34 State Constitution.

35 ~~(III)~~ This sub-sub-subparagraph ~~(II)~~ is subject to the Open
36 Government Sunset Review Act in accordance with s. 119.15, and
37 shall stand repealed on October 2, 2018, unless reviewed and
38 saved from repeal through reenactment by the Legislature.

39 (III) Residential addresses, personal e-mail addresses,
40 license plate numbers, and banking and financial information of



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41 active or former sworn or civilian law enforcement personnel and
42 the other specified agency personnel identified in sub-sub-
43 subparagraph (I) and the home addresses, telephone numbers,
44 photographs, dates of birth, and places of employment of the
45 parents, siblings, and cohabitants of active or former sworn or
46 civilian law enforcement personnel and the other specified
47 agency personnel identified in sub-sub-subparagraph (I) are
48 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
49 Constitution. The exemptions in this sub-sub-subparagraph apply
50 to information held by an agency before, on, or after the
51 effective date of the exemption. This sub-sub-subparagraph is
52 subject to the Open Government Sunset Review Act in accordance
53 with s. 119.15 and shall stand repealed on October 2, 2020,
54 unless reviewed and saved from repeal through reenactment by the
55 Legislature.

56 b. The home addresses, telephone numbers, dates of birth,
57 and photographs of firefighters certified in compliance with s.
58 633.408; the home addresses, telephone numbers, photographs,
59 dates of birth, and places of employment of the spouses and
60 children of such firefighters; and the names and locations of
61 schools and day care facilities attended by the children of such
62 firefighters are exempt from s. 119.07(1).

63 c. The home addresses, dates of birth, and telephone
64 numbers of current or former justices of the Supreme Court,
65 district court of appeal judges, circuit court judges, and
66 county court judges; the home addresses, telephone numbers,
67 dates of birth, and places of employment of the spouses and
68 children of current or former justices and judges; and the names
69 and locations of schools and day care facilities attended by the



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70 children of current or former justices and judges are exempt
71 from s. 119.07(1).

72 d.(I) The home addresses, telephone numbers, social
73 security numbers, dates of birth, and photographs of current or
74 former state attorneys, assistant state attorneys, statewide
75 prosecutors, or assistant statewide prosecutors; the home
76 addresses, telephone numbers, social security numbers,
77 photographs, dates of birth, and places of employment of the
78 spouses and children of current or former state attorneys,
79 assistant state attorneys, statewide prosecutors, or assistant
80 statewide prosecutors; and the names and locations of schools
81 and day care facilities attended by the children of current or
82 former state attorneys, assistant state attorneys, statewide
83 prosecutors, or assistant statewide prosecutors are exempt from
84 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

85 (II) The names of the spouses and children of current or
86 former state attorneys, assistant state attorneys, statewide
87 prosecutors, or assistant statewide prosecutors are exempt from
88 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

89 (III) Sub-sub-subparagraph (II) is subject to the Open
90 Government Sunset Review Act in accordance with s. 119.15, and
91 shall stand repealed on October 2, 2018, unless reviewed and
92 saved from repeal through reenactment by the Legislature.

93 (IV) Residential addresses, personal e-mail addresses,
94 license plate numbers, and banking and financial information of
95 current or former state attorneys, assistant state attorneys,
96 statewide prosecutors, or assistant statewide prosecutors and
97 the home addresses, telephone numbers, photographs, dates of
98 birth, and places of employment of the parents, siblings, and



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99 cohabitants of current or former state attorneys, assistant
100 state attorneys, statewide prosecutors, or assistant statewide
101 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of
102 the State Constitution. The exemptions in this sub-sub-
103 subparagraph apply to information held by an agency before, on,
104 or after the effective date of the exemption. This sub-sub-
105 subparagraph is subject to the Open Government Sunset Review Act
106 in accordance with s. 119.15 and shall stand repealed on October
107 2, 2020, unless reviewed and saved from repeal through
108 reenactment by the Legislature.

109 e. The home addresses, dates of birth, and telephone
110 numbers of general magistrates, special magistrates, judges of
111 compensation claims, administrative law judges of the Division
112 of Administrative Hearings, and child support enforcement
113 hearing officers; the home addresses, telephone numbers, dates
114 of birth, and places of employment of the spouses and children
115 of general magistrates, special magistrates, judges of
116 compensation claims, administrative law judges of the Division
117 of Administrative Hearings, and child support enforcement
118 hearing officers; and the names and locations of schools and day
119 care facilities attended by the children of general magistrates,
120 special magistrates, judges of compensation claims,
121 administrative law judges of the Division of Administrative
122 Hearings, and child support enforcement hearing officers are
123 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
124 Constitution if the general magistrate, special magistrate,
125 judge of compensation claims, administrative law judge of the
126 Division of Administrative Hearings, or child support hearing
127 officer provides a written statement that the general



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128 magistrate, special magistrate, judge of compensation claims,
129 administrative law judge of the Division of Administrative
130 Hearings, or child support hearing officer has made reasonable
131 efforts to protect such information from being accessible
132 through other means available to the public.

133 f. The home addresses, telephone numbers, dates of birth,
134 and photographs of current or former human resource, labor
135 relations, or employee relations directors, assistant directors,
136 managers, or assistant managers of any local government agency
137 or water management district whose duties include hiring and
138 firing employees, labor contract negotiation, administration, or
139 other personnel-related duties; the names, home addresses,
140 telephone numbers, dates of birth, and places of employment of
141 the spouses and children of such personnel; and the names and
142 locations of schools and day care facilities attended by the
143 children of such personnel are exempt from s. 119.07(1) and s.
144 24(a), Art. I of the State Constitution.

145 g. The home addresses, telephone numbers, dates of birth,
146 and photographs of current or former code enforcement officers;
147 the names, home addresses, telephone numbers, dates of birth,
148 and places of employment of the spouses and children of such
149 personnel; and the names and locations of schools and day care
150 facilities attended by the children of such personnel are exempt
151 from s. 119.07(1) and s. 24(a), Art. I of the State
152 Constitution.

153 h. The home addresses, telephone numbers, places of
154 employment, dates of birth, and photographs of current or former
155 guardians ad litem, as defined in s. 39.820; the names, home
156 addresses, telephone numbers, dates of birth, and places of



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157 employment of the spouses and children of such persons; and the
158 names and locations of schools and day care facilities attended
159 by the children of such persons are exempt from s. 119.07(1) and
160 s. 24(a), Art. I of the State Constitution, if the guardian ad
161 litem provides a written statement that the guardian ad litem
162 has made reasonable efforts to protect such information from
163 being accessible through other means available to the public.

164 i. The home addresses, telephone numbers, dates of birth,
165 and photographs of current or former juvenile probation
166 officers, juvenile probation supervisors, detention
167 superintendents, assistant detention superintendents, juvenile
168 justice detention officers I and II, juvenile justice detention
169 officer supervisors, juvenile justice residential officers,
170 juvenile justice residential officer supervisors I and II,
171 juvenile justice counselors, juvenile justice counselor
172 supervisors, human services counselor administrators, senior
173 human services counselor administrators, rehabilitation
174 therapists, and social services counselors of the Department of
175 Juvenile Justice; the names, home addresses, telephone numbers,
176 dates of birth, and places of employment of spouses and children
177 of such personnel; and the names and locations of schools and
178 day care facilities attended by the children of such personnel
179 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
180 Constitution.

181 j.(I) The home addresses, telephone numbers, dates of
182 birth, and photographs of current or former public defenders,
183 assistant public defenders, criminal conflict and civil regional
184 counsel, ~~and~~ assistant criminal conflict and civil regional
185 counsel, capital collateral regional counsel, and assistant



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186 capital collateral regional counsel; the home addresses,
187 telephone numbers, dates of birth, and places of employment of
188 the spouses and children of such defenders or counsel; and the
189 names and locations of schools and day care facilities attended
190 by the children of such defenders or counsel are exempt from s.
191 119.07(1) and s. 24(a), Art. I of the State Constitution. This
192 sub-sub-subparagraph is subject to the Open Government Sunset
193 Review Act in accordance with s. 119.15 and shall stand repealed
194 on October 2, 2020, unless reviewed and saved from repeal
195 through reenactment by the Legislature.

196 (II) The names of the spouses and children of the specified
197 agency personnel identified in sub-sub-subparagraph (I) are
198 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
199 Constitution. This sub-sub-subparagraph is subject to the Open
200 Government Sunset Review Act in accordance with s. 119.15 and
201 shall stand repealed on October 2, 2019, unless reviewed and
202 saved from repeal through reenactment by the Legislature.

203 (III) Residential addresses, personal e-mail addresses,
204 license plate numbers, and banking and financial information of
205 current or former public defenders, assistant public defenders,
206 criminal conflict and civil regional counsel, assistant criminal
207 conflict and civil regional counsel, capital collateral regional
208 counsel, and assistant capital collateral regional counsel, and
209 the home addresses, telephone numbers, photographs, dates of
210 birth, and places of employment of the parents, siblings, and
211 cohabitants of current or former public defenders, assistant
212 public defenders, criminal conflict and civil regional counsel,
213 assistant criminal conflict and civil regional counsel, capital
214 collateral regional counsel, and assistant capital collateral



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215 regional counsel are exempt from s. 119.07(1) and s. 24(a), Art.
216 I of the State Constitution. The exemptions in this sub-sub-
217 subparagraph apply to information held by an agency before, on,
218 or after the effective date of the exemption. This sub-sub-
219 subparagraph is subject to the Open Government Sunset Review Act
220 in accordance with s. 119.15 and shall stand repealed on October
221 2, 2020, unless reviewed and saved from repeal through
222 reenactment by the Legislature.

223 k. The home addresses, telephone numbers, and photographs
224 of current or former investigators or inspectors of the
225 Department of Business and Professional Regulation; the names,
226 home addresses, telephone numbers, and places of employment of
227 the spouses and children of such current or former investigators
228 and inspectors; and the names and locations of schools and day
229 care facilities attended by the children of such current or
230 former investigators and inspectors are exempt from s. 119.07(1)
231 and s. 24(a), Art. I of the State Constitution if the
232 investigator or inspector has made reasonable efforts to protect
233 such information from being accessible through other means
234 available to the public. This sub-subparagraph is subject to the
235 Open Government Sunset Review Act in accordance with s. 119.15
236 and shall stand repealed on October 2, 2017, unless reviewed and
237 saved from repeal through reenactment by the Legislature.

238 1. The home addresses and telephone numbers of county tax
239 collectors; the names, home addresses, telephone numbers, and
240 places of employment of the spouses and children of such tax
241 collectors; and the names and locations of schools and day care
242 facilities attended by the children of such tax collectors are
243 exempt from s. 119.07(1) and s. 24(a), Art. I of the State



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244 Constitution if the county tax collector has made reasonable
245 efforts to protect such information from being accessible
246 through other means available to the public. This sub-
247 subparagraph is subject to the Open Government Sunset Review Act
248 in accordance with s. 119.15 and shall stand repealed on October
249 2, 2017, unless reviewed and saved from repeal through
250 reenactment by the Legislature.

251 m. The home addresses, telephone numbers, dates of birth,
252 and photographs of current or former personnel of the Department
253 of Health whose duties include, or result in, the determination
254 or adjudication of eligibility for social security disability
255 benefits, the investigation or prosecution of complaints filed
256 against health care practitioners, or the inspection of health
257 care practitioners or health care facilities licensed by the
258 Department of Health; the names, home addresses, telephone
259 numbers, dates of birth, and places of employment of the spouses
260 and children of such personnel; and the names and locations of
261 schools and day care facilities attended by the children of such
262 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
263 the State Constitution if the personnel have made reasonable
264 efforts to protect such information from being accessible
265 through other means available to the public. This sub-
266 subparagraph is subject to the Open Government Sunset Review Act
267 in accordance with s. 119.15 and shall stand repealed on October
268 2, 2019, unless reviewed and saved from repeal through
269 reenactment by the Legislature.

270 3. An agency that is the custodian of the information
271 specified in subparagraph 2. and that is not the employer of the
272 officer, employee, justice, judge, or other person specified in



273 subparagraph 2. shall maintain the exempt status of that
274 information only if the officer, employee, justice, judge, other
275 person, or employing agency of the designated employee submits a
276 written request for maintenance of the exemption to the
277 custodial agency.

278 4. The exemptions in this paragraph apply to information
279 held by an agency before, on, or after the effective date of the
280 exemption.

281 5. Except as otherwise expressly provided in this
282 paragraph, this paragraph is subject to the Open Government
283 Sunset Review Act in accordance with s. 119.15, and shall stand
284 repealed on October 2, 2017, unless reviewed and saved from
285 repeal through reenactment by the Legislature.

286 Section 2. (1) The Legislature finds that it is a public
287 necessity that the home addresses, telephone numbers, dates of
288 birth, and photographs of commissioners of the Florida
289 Commission on Offender Review, and the personnel of the
290 commission whose duties include making final decisions on
291 holding a hearing for, or investigating violations of, post-
292 incarceration supervised release, and current or former capital
293 collateral regional counsel and assistant capital collateral
294 regional counsel; the home addresses, telephone numbers, dates
295 of birth, and places of employment of the spouses and children
296 of such personnel and counsel; and the names and locations of
297 schools and day care facilities attended by the children of such
298 personnel and counsel be exempt from s. 119.07(1), Florida
299 Statutes, and s. 24(a), Article I of the State Constitution.
300 Further, the Legislature also finds that it is a public
301 necessity that the names of the spouses and children of



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302 commissioners of the Florida Commission on Offender Review, and
303 the personnel of the commission whose duties include making
304 final decisions on holding a hearing for, or investigating
305 violations of, post-incarceration supervised release, and
306 current or former capital collateral regional counsel and
307 assistant capital collateral regional counsel be exempt from s.
308 119.07(1), Florida Statutes, and s. 24(a), Article I of the
309 State Constitution. The Legislature finds that commissioners of
310 the Florida Commission on Offender Review, and the personnel of
311 the commission whose duties include making final decisions on
312 holding a hearing for, or investigating violations of, post-
313 incarceration supervised release, and current or former capital
314 collateral regional counsel and assistant capital collateral
315 regional counsel and their families are entitled to the same
316 protections that are afforded to active or former sworn or civil
317 law enforcement personnel and other agency personnel identified
318 in s. 119.071(4)(d)2.a.(I), Florida Statutes, public defenders,
319 assistant public defenders, criminal conflict and civil regional
320 counsel, assistant criminal conflict and civil regional counsel,
321 and their families. The public disclosure of identification and
322 location information and the names of the spouses and children
323 of commissioners of the Florida Commission on Offender Review,
324 and the personnel of the commission whose duties include making
325 final decisions on holding a hearing for, or investigating
326 violations of, post-incarceration supervised release and current
327 or former capital collateral regional counsel and assistant
328 capital collateral regional counsel places such personnel and
329 counsel and their families in danger of physical and emotional
330 harm from disgruntled individuals who have contentious reactions



331 to actions carried out through the commission's or counsel's
332 official duties.

333 (2) The Legislature also finds that it is a public
334 necessity that the residential addresses, personal e-mail
335 addresses, license plate numbers, and banking and financial
336 information of active or former sworn or civilian law
337 enforcement personnel, including correctional and correctional
338 probation officers, personnel of the Department of Children and
339 Families whose duties include the investigation of abuse,
340 neglect, exploitation, fraud, theft, or other criminal
341 activities, personnel of the Department of Health whose duties
342 are to support the investigation of child abuse or neglect,
343 personnel of the Department of Revenue or local governments
344 whose responsibilities include revenue collection and
345 enforcement or child support enforcement, commissioners of the
346 Florida Commission on Offender Review, and the personnel of the
347 commission whose duties include making final decisions on
348 holding a hearing for, or investigating violations of, post-
349 incarceration supervised release, current or former

350
351 ===== T I T L E A M E N D M E N T =====

352 And the title is amended as follows:

353 Delete lines 6 - 14

354 and insert:

355 personnel and specified agency personnel,
356 commissioners of the Florida Commission on Offender
357 Review and specified commission personnel, current and
358 former state attorneys, assistant state attorneys,
359 statewide prosecutors, assistant statewide



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360 prosecutors, public defenders, assistant public
361 defenders, criminal conflict and civil regional
362 counsel, assistant criminal conflict and civil
363 regional counsel, capital collateral regional counsel,
364 and assistant capital collateral regional counsel and
365 their spouses, children, parents, siblings, or
366 cohabitants; providing for



310864

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 304 - 319
and insert:

Section 2. (1) The Legislature finds that it is a public necessity that the home addresses, telephone numbers, dates of birth, and photographs of current or former capital collateral regional counsel and assistant capital collateral regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such counsel; and the names and locations of schools and day care



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12 facilities attended by the children of such counsel be exempt
13 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
14 the State Constitution. Further, the Legislature also finds that
15 it is a public necessity that the names of the spouses and
16 children of current or former capital collateral regional
17 counsel and assistant capital collateral regional counsel be
18 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
19 Article I of the State Constitution. The Legislature finds that
20 current or former capital collateral regional counsel and
21 assistant capital collateral regional counsel and their families
22 are entitled to the same protections that are afforded to public
23 defenders, assistant public defenders, criminal conflict and
24 civil regional counsel, assistant criminal conflict and civil
25 regional counsel, and their families. The public disclosure of
26 identification and location information and the names of the
27 spouses and children of current or former capital collateral
28 regional counsel and assistant capital collateral regional
29 counsel places such counsel and their families in danger of
30 physical and emotional harm from disgruntled individuals who
31 have contentious reactions to actions carried out through the
32 counsel's legal representation.

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete line 14

37 and insert:

38 their spouses, children, parents, siblings, or
39 cohabitants; providing for

By the Committees on Governmental Oversight and Accountability;
and Criminal Justice; and Senator Latvala

585-03643-15

20151324c2

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; providing exemptions from public
4 records requirements for certain information related
5 to active or former sworn or civilian law enforcement
6 personnel and specified agency personnel, current and
7 former state attorneys, assistant state attorneys,
8 statewide prosecutors, assistant statewide
9 prosecutors, public defenders, assistant public
10 defenders, criminal conflict and civil regional
11 counsel, assistant criminal conflict and civil
12 regional counsel, capital collateral regional counsel,
13 and assistant capital collateral regional counsel and
14 their parents, siblings, or cohabitants; providing for
15 retroactive application; providing for future
16 legislative review and repeal of the exemptions;
17 providing a statement of public necessity; providing
18 an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Paragraph (d) of subsection (4) of section
23 119.071, Florida Statutes, is amended to read:
24 119.071 General exemptions from inspection or copying of
25 public records.—
26 (4) AGENCY PERSONNEL INFORMATION.—
27 (d)1. For purposes of this paragraph, the term "telephone
28 numbers" includes home telephone numbers, personal cellular
29 telephone numbers, personal pager telephone numbers, and

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30 telephone numbers associated with personal communications
31 devices.
32 2.a.(I) The home addresses, telephone numbers, social
33 security numbers, dates of birth, and photographs of active or
34 former sworn or civilian law enforcement personnel, including
35 correctional and correctional probation officers, personnel of
36 the Department of Children and Families whose duties include the
37 investigation of abuse, neglect, exploitation, fraud, theft, or
38 other criminal activities, personnel of the Department of Health
39 whose duties are to support the investigation of child abuse or
40 neglect, and personnel of the Department of Revenue or local
41 governments whose responsibilities include revenue collection
42 and enforcement or child support enforcement; the home
43 addresses, telephone numbers, social security numbers,
44 photographs, dates of birth, and places of employment of the
45 spouses and children of such personnel; and the names and
46 locations of schools and day care facilities attended by the
47 children of such personnel are exempt from s. 119.07(1).
48 (II) The names of the spouses and children of active or
49 former sworn or civilian law enforcement personnel and the other
50 specified agency personnel identified in sub-sub-subparagraph
51 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
52 State Constitution.
53 (III) Sub-sub-subparagraph (II) is subject to the Open
54 Government Sunset Review Act in accordance with s. 119.15, and
55 shall stand repealed on October 2, 2018, unless reviewed and
56 saved from repeal through reenactment by the Legislature.
57 (IV) Residential addresses, personal e-mail addresses,
58 license plate numbers, and banking and financial information of

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59 active or former sworn or civilian law enforcement personnel and
 60 the other specified agency personnel identified in sub-sub-
 61 paragraph (I) and the home addresses, telephone numbers,
 62 photographs, dates of birth, and places of employment of the
 63 parents, siblings, and cohabitants of active or former sworn or
 64 civilian law enforcement personnel and the other specified
 65 agency personnel identified in sub-sub-subparagraph (I) are
 66 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 67 Constitution. The exemptions in this sub-sub-subparagraph apply
 68 to information held by an agency before, on, or after the
 69 effective date of the exemption. This sub-sub-subparagraph is
 70 subject to the Open Government Sunset Review Act in accordance
 71 with s. 119.15 and shall stand repealed on October 2, 2020,
 72 unless reviewed and saved from repeal through reenactment by the
 73 Legislature.

74 b. The home addresses, telephone numbers, dates of birth,
 75 and photographs of firefighters certified in compliance with s.
 76 633.408; the home addresses, telephone numbers, photographs,
 77 dates of birth, and places of employment of the spouses and
 78 children of such firefighters; and the names and locations of
 79 schools and day care facilities attended by the children of such
 80 firefighters are exempt from s. 119.07(1).

81 c. The home addresses, dates of birth, and telephone
 82 numbers of current or former justices of the Supreme Court,
 83 district court of appeal judges, circuit court judges, and
 84 county court judges; the home addresses, telephone numbers,
 85 dates of birth, and places of employment of the spouses and
 86 children of current or former justices and judges; and the names
 87 and locations of schools and day care facilities attended by the

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88 children of current or former justices and judges are exempt
 89 from s. 119.07(1).

90 d.(I) The home addresses, telephone numbers, social
 91 security numbers, dates of birth, and photographs of current or
 92 former state attorneys, assistant state attorneys, statewide
 93 prosecutors, or assistant statewide prosecutors; the home
 94 addresses, telephone numbers, social security numbers,
 95 photographs, dates of birth, and places of employment of the
 96 spouses and children of current or former state attorneys,
 97 assistant state attorneys, statewide prosecutors, or assistant
 98 statewide prosecutors; and the names and locations of schools
 99 and day care facilities attended by the children of current or
 100 former state attorneys, assistant state attorneys, statewide
 101 prosecutors, or assistant statewide prosecutors are exempt from
 102 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

103 (II) The names of the spouses and children of current or
 104 former state attorneys, assistant state attorneys, statewide
 105 prosecutors, or assistant statewide prosecutors are exempt from
 106 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

107 (III) Sub-sub-subparagraph (II) is subject to the Open
 108 Government Sunset Review Act in accordance with s. 119.15, and
 109 shall stand repealed on October 2, 2018, unless reviewed and
 110 saved from repeal through reenactment by the Legislature.

111 (IV) Residential addresses, personal e-mail addresses,
 112 license plate numbers, and banking and financial information of
 113 current or former state attorneys, assistant state attorneys,
 114 statewide prosecutors, or assistant statewide prosecutors and
 115 the home addresses, telephone numbers, photographs, dates of
 116 birth, and places of employment of the parents, siblings, and

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117 cohabitants of current or former state attorneys, assistant
 118 state attorneys, statewide prosecutors, or assistant statewide
 119 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of
 120 the State Constitution. The exemptions in this sub-sub-
 121 subparagraph apply to information held by an agency before, on,
 122 or after the effective date of the exemption. This sub-sub-
 123 subparagraph is subject to the Open Government Sunset Review Act
 124 in accordance with s. 119.15 and shall stand repealed on October
 125 2, 2020, unless reviewed and saved from repeal through
 126 reenactment by the Legislature.

127 e. The home addresses, dates of birth, and telephone
 128 numbers of general magistrates, special magistrates, judges of
 129 compensation claims, administrative law judges of the Division
 130 of Administrative Hearings, and child support enforcement
 131 hearing officers; the home addresses, telephone numbers, dates
 132 of birth, and places of employment of the spouses and children
 133 of general magistrates, special magistrates, judges of
 134 compensation claims, administrative law judges of the Division
 135 of Administrative Hearings, and child support enforcement
 136 hearing officers; and the names and locations of schools and day
 137 care facilities attended by the children of general magistrates,
 138 special magistrates, judges of compensation claims,
 139 administrative law judges of the Division of Administrative
 140 Hearings, and child support enforcement hearing officers are
 141 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 142 Constitution if the general magistrate, special magistrate,
 143 judge of compensation claims, administrative law judge of the
 144 Division of Administrative Hearings, or child support hearing
 145 officer provides a written statement that the general

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146 magistrate, special magistrate, judge of compensation claims,
 147 administrative law judge of the Division of Administrative
 148 Hearings, or child support hearing officer has made reasonable
 149 efforts to protect such information from being accessible
 150 through other means available to the public.

151 f. The home addresses, telephone numbers, dates of birth,
 152 and photographs of current or former human resource, labor
 153 relations, or employee relations directors, assistant directors,
 154 managers, or assistant managers of any local government agency
 155 or water management district whose duties include hiring and
 156 firing employees, labor contract negotiation, administration, or
 157 other personnel-related duties; the names, home addresses,
 158 telephone numbers, dates of birth, and places of employment of
 159 the spouses and children of such personnel; and the names and
 160 locations of schools and day care facilities attended by the
 161 children of such personnel are exempt from s. 119.07(1) and s.
 162 24(a), Art. I of the State Constitution.

163 g. The home addresses, telephone numbers, dates of birth,
 164 and photographs of current or former code enforcement officers;
 165 the names, home addresses, telephone numbers, dates of birth,
 166 and places of employment of the spouses and children of such
 167 personnel; and the names and locations of schools and day care
 168 facilities attended by the children of such personnel are exempt
 169 from s. 119.07(1) and s. 24(a), Art. I of the State
 170 Constitution.

171 h. The home addresses, telephone numbers, places of
 172 employment, dates of birth, and photographs of current or former
 173 guardians ad litem, as defined in s. 39.820; the names, home
 174 addresses, telephone numbers, dates of birth, and places of

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175 employment of the spouses and children of such persons; and the
 176 names and locations of schools and day care facilities attended
 177 by the children of such persons are exempt from s. 119.07(1) and
 178 s. 24(a), Art. I of the State Constitution, if the guardian ad
 179 litem provides a written statement that the guardian ad litem
 180 has made reasonable efforts to protect such information from
 181 being accessible through other means available to the public.

182 i. The home addresses, telephone numbers, dates of birth,
 183 and photographs of current or former juvenile probation
 184 officers, juvenile probation supervisors, detention
 185 superintendents, assistant detention superintendents, juvenile
 186 justice detention officers I and II, juvenile justice detention
 187 officer supervisors, juvenile justice residential officers,
 188 juvenile justice residential officer supervisors I and II,
 189 juvenile justice counselors, juvenile justice counselor
 190 supervisors, human services counselor administrators, senior
 191 human services counselor administrators, rehabilitation
 192 therapists, and social services counselors of the Department of
 193 Juvenile Justice; the names, home addresses, telephone numbers,
 194 dates of birth, and places of employment of spouses and children
 195 of such personnel; and the names and locations of schools and
 196 day care facilities attended by the children of such personnel
 197 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 198 Constitution.

199 j.(I) The home addresses, telephone numbers, dates of
 200 birth, and photographs of current or former public defenders,
 201 assistant public defenders, criminal conflict and civil regional
 202 counsel, ~~and~~ assistant criminal conflict and civil regional
 203 counsel, capital collateral regional counsel, and assistant

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204 capital collateral regional counsel; the home addresses,
 205 telephone numbers, dates of birth, and places of employment of
 206 the spouses and children of such defenders or counsel; and the
 207 names and locations of schools and day care facilities attended
 208 by the children of such defenders or counsel are exempt from s.
 209 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 210 sub-sub-subparagraph is subject to the Open Government Sunset
 211 Review Act in accordance with s. 119.15 and shall stand repealed
 212 on October 2, 2020, unless reviewed and saved from repeal
 213 through reenactment by the Legislature.

214 (II) The names of the spouses and children of the specified
 215 agency personnel identified in sub-sub-subparagraph (I) are
 216 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 217 Constitution. This sub-sub-subparagraph is subject to the Open
 218 Government Sunset Review Act in accordance with s. 119.15 and
 219 shall stand repealed on October 2, 2019, unless reviewed and
 220 saved from repeal through reenactment by the Legislature.

221 (III) Residential addresses, personal e-mail addresses,
 222 license plate numbers, and banking and financial information of
 223 current or former public defenders, assistant public defenders,
 224 criminal conflict and civil regional counsel, assistant criminal
 225 conflict and civil regional counsel, capital collateral regional
 226 counsel, and assistant capital collateral regional counsel, and
 227 the home addresses, telephone numbers, photographs, dates of
 228 birth, and places of employment of the parents, siblings, and
 229 cohabitants of current or former public defenders, assistant
 230 public defenders, criminal conflict and civil regional counsel,
 231 assistant criminal conflict and civil regional counsel, capital
 232 collateral regional counsel, and assistant capital collateral

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233 regional counsel are exempt from s. 119.07(1) and s. 24(a), Art.
 234 I of the State Constitution. The exemptions in this sub-sub-
 235 subparagraph apply to information held by an agency before, on,
 236 or after the effective date of the exemption. This sub-sub-
 237 subparagraph is subject to the Open Government Sunset Review Act
 238 in accordance with s. 119.15 and shall stand repealed on October
 239 2, 2020, unless reviewed and saved from repeal through
 240 reenactment by the Legislature.

241 k. The home addresses, telephone numbers, and photographs
 242 of current or former investigators or inspectors of the
 243 Department of Business and Professional Regulation; the names,
 244 home addresses, telephone numbers, and places of employment of
 245 the spouses and children of such current or former investigators
 246 and inspectors; and the names and locations of schools and day
 247 care facilities attended by the children of such current or
 248 former investigators and inspectors are exempt from s. 119.07(1)
 249 and s. 24(a), Art. I of the State Constitution if the
 250 investigator or inspector has made reasonable efforts to protect
 251 such information from being accessible through other means
 252 available to the public. This sub-subparagraph is subject to the
 253 Open Government Sunset Review Act in accordance with s. 119.15
 254 and shall stand repealed on October 2, 2017, unless reviewed and
 255 saved from repeal through reenactment by the Legislature.

256 1. The home addresses and telephone numbers of county tax
 257 collectors; the names, home addresses, telephone numbers, and
 258 places of employment of the spouses and children of such tax
 259 collectors; and the names and locations of schools and day care
 260 facilities attended by the children of such tax collectors are
 261 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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262 Constitution if the county tax collector has made reasonable
 263 efforts to protect such information from being accessible
 264 through other means available to the public. This sub-
 265 subparagraph is subject to the Open Government Sunset Review Act
 266 in accordance with s. 119.15 and shall stand repealed on October
 267 2, 2017, unless reviewed and saved from repeal through
 268 reenactment by the Legislature.

269 m. The home addresses, telephone numbers, dates of birth,
 270 and photographs of current or former personnel of the Department
 271 of Health whose duties include, or result in, the determination
 272 or adjudication of eligibility for social security disability
 273 benefits, the investigation or prosecution of complaints filed
 274 against health care practitioners, or the inspection of health
 275 care practitioners or health care facilities licensed by the
 276 Department of Health; the names, home addresses, telephone
 277 numbers, dates of birth, and places of employment of the spouses
 278 and children of such personnel; and the names and locations of
 279 schools and day care facilities attended by the children of such
 280 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 281 the State Constitution if the personnel have made reasonable
 282 efforts to protect such information from being accessible
 283 through other means available to the public. This sub-
 284 subparagraph is subject to the Open Government Sunset Review Act
 285 in accordance with s. 119.15 and shall stand repealed on October
 286 2, 2019, unless reviewed and saved from repeal through
 287 reenactment by the Legislature.

288 3. An agency that is the custodian of the information
 289 specified in subparagraph 2. and that is not the employer of the
 290 officer, employee, justice, judge, or other person specified in

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291 subparagraph 2. shall maintain the exempt status of that
 292 information only if the officer, employee, justice, judge, other
 293 person, or employing agency of the designated employee submits a
 294 written request for maintenance of the exemption to the
 295 custodial agency.

296 4. The exemptions in this paragraph apply to information
 297 held by an agency before, on, or after the effective date of the
 298 exemption.

299 5. Except as otherwise expressly provided in this
 300 paragraph, this paragraph is subject to the Open Government
 301 Sunset Review Act in accordance with s. 119.15, and shall stand
 302 repealed on October 2, 2017, unless reviewed and saved from
 303 repeal through reenactment by the Legislature.

304 Section 2. (1) The Legislature finds that it is a public
 305 necessity that the home addresses, telephone numbers, dates of
 306 birth, and photographs of current or former capital collateral
 307 regional counsel and assistant capital collateral regional
 308 counsel be exempt from s. 119.07(1), Florida Statutes, and s.
 309 24(a), Article I of the State Constitution. The Legislature
 310 finds that current or former capital collateral regional counsel
 311 and assistant capital collateral regional counsel are entitled
 312 to the same protections that are afforded to public defenders,
 313 assistant public defenders, criminal conflict and civil regional
 314 counsel, and assistant criminal conflict and civil regional
 315 counsel. The public disclosure of the information places current
 316 or former capital collateral regional counsel and assistant
 317 capital collateral regional counsel in danger of physical and
 318 emotional harm from disgruntled individuals who have contentious
 319 reactions to actions carried out by such counsel.

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320 (2) The Legislature also finds that it is a public
 321 necessity that the residential addresses, personal e-mail
 322 addresses, license plate numbers, and banking and financial
 323 information of active or former sworn or civilian law
 324 enforcement personnel, including correctional and correctional
 325 probation officers, personnel of the Department of Children and
 326 Families whose duties include the investigation of abuse,
 327 neglect, exploitation, fraud, theft, or other criminal
 328 activities, personnel of the Department of Health whose duties
 329 are to support the investigation of child abuse or neglect,
 330 personnel of the Department of Revenue or local governments
 331 whose responsibilities include revenue collection and
 332 enforcement or child support enforcement, current or former
 333 state attorneys, assistant state attorneys, statewide
 334 prosecutors, assistant statewide prosecutors, public defenders,
 335 assistant public defenders, criminal conflict and civil regional
 336 counsel, assistant criminal conflict and civil regional counsel,
 337 capital collateral regional counsel, and assistant capital
 338 collateral regional counsel be made exempt from s. 119.07(1),
 339 Florida Statutes, and s. 24(a), Article I of the State
 340 Constitution. The Legislature further finds that it is a public
 341 necessity that the home addresses, telephone numbers,
 342 photographs, dates of birth, and places of employment of the
 343 parents, siblings, and cohabitants of such persons be made
 344 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 345 Article I of the State Constitution. The Legislature finds that
 346 the release of such identifying and location information places
 347 the person, or a parent, sibling, or cohabitant of the person,
 348 in danger of being physically and emotionally harmed or being

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349 stalked by a defendant or other person. The Legislature finds
350 that the harm that may result from the release of such
351 identifying and location information outweighs any public
352 benefit that may be derived from the disclosure of the
353 information.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15
Meeting Date

1324
Bill Number (if applicable)

Topic SB 1324

Amendment Barcode (if applicable)

Name James Viggiano

Job Title Capital Collateral Regional Council

Address 3801 Corporate Park Drive

Phone (813) 740-3544

Street

Tampa FL 33559

City

State

Zip

Email viggiano@ccmr.state.fl.us

Speaking: For Against Information

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

Representing Capital Collateral Regional Council

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)

April 15, 2015

Meeting Date

1324

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Phone 850.510.2187

Street

Tallahassee

Florida

32301

Email roberttrammell45@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

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)

April 15, 2015

Meeting Date

1324

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Matthew Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/2014
Meeting Date

1324
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St.

Phone 850-222-3329

Street

Tallahassee

City

FL

State

32301

Zip

Email N/A

Speaking: For Against Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: SB 7060

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Ratification of Department of Environmental Protection Rules

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>		EP Submitted as Committee Bill
2.	<u>Gudeman</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7060 ratifies Rule 62-701.730, F.A.C., relating to construction and demolition (C&D) debris disposal facilities regulated by the Department of Environmental Protection (DEP), Division of Waste Management.

II. Present Situation:

Solid Waste Management

Florida began managing solid waste in 1946 under the Sanitary Code (code). The code provided definitions for the terms “garbage,” “rubbish,” “offal,” “dead animals,” and “manure,” as well as procedures for illegal dumping and the collection, storage, and dumping of solid waste. The code required municipalities to provide for, “adequate, efficient, and sanitary systems of collecting, transporting, and disposing of garbage and rubbish from all buildings and establishments creating garbage or rubbish throughout the municipality” in a manner approved by the State Board of Health.¹

In 1974, the Legislature enacted the Florida Resource Recovery and Management Act (act), which established procedures for the storage, collection, transport, separation, processing, recycling, and disposal of solid waste. The act required counties and municipalities to adopt local resource recovery and management programs and to implement the state program.²

The Legislature enacted the Solid Waste Management Act (SWMA) in 1988, which created the framework for the state’s recycling efforts. The SWMA set a goal to reduce the disposal of municipal solid waste by 30 percent by the end of 1994.³ The SWMA required the DEP to

¹ Florida State Sanitary Code, Chapter XXXI, Garbage and Rubbish, available at ftp://ftp.dep.state.fl.us/pub/reports/62-701/FloridaSWRegulations_eff02-16-1946.pdf (last visited Mar. 20, 2015).

² See ch. 74-342, Laws of Fla.

³ See ch. 88-130, Laws of Fla.

implement the solid waste program, adopt rules related to the program, and manage grant programs.

The Legislature created s. 403.7032, F.S., in 2008, which established the 75 percent recycling goal to be achieved by 2020 and required the DEP to develop a program to achieve this goal and submit a report to the Legislature for approval. The report:

- Encourages private businesses to report the amount they recycle annually to the county;
- Directs the DEP to recognize successful recycling efforts in schools, businesses, public groups, and of private citizens;
- Directs the DEP to create the Recycle Business Assistance center.
- Recommends all C&D debris⁴ be processed at a materials recovery facility prior to disposal; and
- Recommends the creation of a recycling grants or revolving loan program for local governments to aid in reaching the 75 percent recycling goal for their jurisdictions.⁵

Florida currently has 70 active C&D debris disposal sites and 83 landfills that will accept such material.⁶ Disposal at the C&D debris facilities is typically less expensive than at a Class I landfill, but more hazardous to the environment because most C&D sites are unlined and do not have daily covering requirements.⁷

C&D debris accounts for 25 percent of Florida's total municipal solid waste stream and consists of materials that are generated from residential and commercial building, renovations, and demolitions. C&D material include wood, steel, glass, brick, concrete, asphalt, wallboard, rocks, soils, tree remains, and other vegetative matter. The DEP estimates that approximately 27 percent, or 2.1 million tons of the C&D material disposed of in Florida is recycled annually and contributes to 12 percent of the 75 percent recycling goal.⁸

Section 403.707, F.S., specifies the permit requirements for solid waste management facilities and the regulatory exceptions provided for certain types of solid waste disposal. Section 403.707(9), F.S., requires the DEP to establish criteria for the construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for solid waste management facilities that only accept C&D debris for disposal or recycling.

In 2010, s. 403.707, F.S., was amended to require liner and leachate collection systems at individual C&D debris disposal sites permitted after July 1, 2010, and for the lateral expansion of sites. The law provides an exemption from this requirement if the facility owner is able to demonstrate, using groundwater modeling, that the facility will not result in a violation of groundwater standards and criteria.

⁴ For a description of what constitutes C&D debris, see Fla. Admin. Code R. 62-701.200(25) (2015).

⁵ DEP, *75% Recycling Goal Report to the Legislature*, 20-22 (2010), available at http://dep.state.fl.us/waste/quick_topics/publications/shw/recycling/75percent/75_recycling_report.pdf (last visited Mar. 20, 2014).

⁶ *Id.* at 12. See also DEP, *Statement of Estimated Regulatory Cost, Rule 62-701.730, Florida Administrative Code*, 2 (June 3, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁷ *Supra* note 5, at 11.

⁸ *Supra* note 5, at 12-13.

The law also required by January 1, 2012, C&D debris be processed and recycled at a materials recovery facility or any other permitted disposal facility prior disposal. The amount of material that is processed and recycled must be reported by the county of origin to the DEP and the county of disposal. The law provides an exemption for recovered material, material that has been source separated and offered for recycling, or material that has been previously processed.

Legislative Ratification of Agency Rules

In order to implement the requirements in s. 403.707, F.S., the DEP has proposed revisions to Rule 62-701.730, F.A.C., entitled “Construction and Demolition Debris Disposal and Recycling.”

Pursuant to s. 120.541(3), F.S., the Legislature must ratify a rule that:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.⁹

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rule 62-701.730, F.A.C., and determined the rule triggers a statutory threshold requiring ratification. The SERC estimates the total cost for the liner and associated components for a 20 acre site will be approximately \$3.2 million. The total cost of the leachate management system at a 20 acre site over a 10 year period will be approximately \$2.65 million.¹⁰

Currently, there are 70 active C&D debris disposal facilities in Florida, five of which are lined. Since 2009, the DEP has received two applications for new C&D debris disposal facilities, and three permit modification applications. To date, the DEP has not received any requests from facility owners to be exempt from the liner and leachate requirements.¹¹

III. Effect of Proposed Changes:

The bill ratifies Rule 62-701.703, F.A.C. The rule directs the DEP to require liners and leachate collection systems at new and expanded C&D debris disposal facilities.

⁹ Section 120.541(2)(a)1.-3., F.S.

¹⁰ DEP, *Statement of Estimated Regulatory Cost, Evaluations for Phase II Changes to Rule 62-701.730, Florida Administrative Code*, 5-6 (May 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹¹ DEP, *Statement of Estimated Regulatory Cost, Rule 62-701.730, Florida Administrative Code*, 2 (June 3, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

The bill also:

- Ratifies Rule 62-701.703, F.A.C., for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.;
- Requires the DEP to note its enactment and effective dates in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate;
- Does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DEP estimates the cost of the liner and the leachate system to be approximately \$5.8 million for a 20 acre facility in operation for 10 years. The new requirements will have both a positive and negative fiscal impact on the private sector. The privately owned C&D debris disposal facilities may raise rates to offset the cost of the liner and leachate collection system. The increased rates of the C&D debris disposal facilities may result in increased utilization of recycling facilities if the recycling rates are lower than C&D debris disposal rates.

C. Government Sector Impact:

C&D debris disposal facilities owned by local governments will incur similar costs as the private sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation

592-02830-15

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1 A bill to be entitled
 2 An act relating to ratification of Department of
 3 Environmental Protection rules; ratifying a specified
 4 rule relating to liners and leachate collection
 5 systems for construction and demolition debris
 6 disposal facilities, for the sole and exclusive
 7 purpose of satisfying any condition on effectiveness
 8 pursuant to s. 120.541(3), F.S., which requires
 9 ratification of any rule meeting any specified
 10 thresholds of likely adverse impact or increase in
 11 regulatory costs; providing applicability; providing
 12 an effective date.

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

15
 16 Section 1. (1) The following rule is ratified for the sole
 17 and exclusive purpose of satisfying any condition on
 18 effectiveness imposed under s. 120.541(3), Florida Statutes:
 19 Rule 62-701.730, Florida Administrative Code, entitled
 20 "Construction and Demolition Debris Disposal and Recycling," as
 21 filed for adoption with the Department of State pursuant to the
 22 certification package dated January 30, 2015.

23 (2) This act serves no other purpose and shall not be
 24 codified in the Florida Statutes. After this act becomes law,
 25 its enactment and effective dates shall be noted in the Florida
 26 Administrative Code or the Florida Administrative Register, or
 27 both, as appropriate. This act does not alter rulemaking
 28 authority delegated by prior law, does not constitute
 29 legislative preemption of or exception to any provision of law

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

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30 governing adoption or enforcement of the rules cited, and is
 31 intended to preserve the status of any cited rule as a rule
 32 under chapter 120, Florida Statutes. This act does not cure any
 33 rulemaking defect or preempt any challenge based on a lack of
 34 authority or a violation of the legal requirements governing the
 35 adoption of any rule cited.

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.

5th District

April 1, 2015

The Honorable David Simmons
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons,

I respectfully request you place Senate Bill 7060, relating to Ratification of Department of Environmental Protection Rules, on your Rules Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: John Phelps, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7062

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Ratification of Department of Environmental Protection Rules

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>		EP Submitted as Committee Bill
2.	<u>Hinton</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7062 ratifies Rule 62-42.300, F.A.C., establishing minimum flows and levels (MFLs) for the Lower Santa Fe and Ichetucknee Rivers, and associated priority springs. It requires the DEP to publish a notice of enactment in the Florida Administrative Register or the Florida Administrative Code, or both, as appropriate.

II. Present Situation:

Minimum Flows and Levels

MFLs are established for water bodies in order to prevent significant harm as a result of permitted water withdrawals. MFLs are typically determined based on evaluations of topography, soils, and vegetation data collected within plant communities, and other pertinent information associated with the water resource. MFLs take into account the ability of wetlands and aquatic communities to adjust to changes in hydrologic conditions and allow for an acceptable level of hydrologic change to occur. When use of water resources shifts the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.¹

The consumptive use of water can draw down water levels and reduce pressure in the aquifer.² By establishing MFLs for non-consumptive uses,³ the water management districts (WMDs) can determine how much water is available for consumptive uses.

¹ St. Johns River Water Management District, *Water Supply: An Overview of Minimum Flows and Levels*, <http://www.sjrwmd.com/minimumflowsandlevels/> (last visited Mar. 19, 2015).

² Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-5 (Feb. 2008), available at <http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf> (last visited Mar. 19, 2015).

³ Examples of consumptive uses include agricultural irrigation, public water supply, golf course irrigation, mining, and power generation. Non-consumptive uses of water include recreational, aesthetic, and navigational uses of water resources.

Section 373.042, F.S., requires the Department of Environmental Protection (DEP) or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. MFLs are considered rules and are subject to ch. 120, F.S., challenges. MFLs are established by the DEP, in coordination with the applicable WMD, using the best available data and are subject to independent scientific peer review at the request of the WMD, or, if requested, by a third party.⁴

MFLs apply to decisions affecting permit applications, declarations of water shortages, and assessments of water supply sources. Models for surface waters and groundwater are used to evaluate the effects of existing and/or proposed consumptive uses and the likelihood they might cause significant harm.

If the existing flow or water level in a waterbody is below, or is projected to fall within 20 years below, the applicable minimum flow or water level, the DEP or WMD must expeditiously implement a recovery or prevention strategy.⁵ Recovery or prevention strategies include phasing or a timetable that allows for the development of sufficient water supplies for all existing and projected reasonable-beneficial uses. The strategy also includes development of additional water supplies and implementation of conservation strategies, the use of impact offsets, and other efficiency measures to accommodate withdrawals.⁶

Consumptive Use Permits

Consumptive use permits (CUPs) establish the duration and type of consumptive water use as well as the maximum amount of water that may be withdrawn daily by a permittee.⁷ Each CUP must be consistent with the objectives of the issuing WMD, or the DEP, and may not be harmful to the water resources of the area.⁸ To obtain a CUP, an applicant must establish that the proposed use of water satisfies a statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- Be a “reasonable-beneficial use;”⁹
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.¹⁰

Regional Water Supply Planning

WMDs are required to conduct water supply needs assessments. If the assessment determines that existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period for a particular water supply planning region, it must prepare a regional water supply

⁴ Section 373.042, F.S.

⁵ Section 373.0421, F.S. See also Fla. Admin. Code R. 62-40.473 (2013).

⁶ *Id.*

⁷ Fla. Admin. Code R. 40C-2 (2014).

⁸ Section 373.219, F.S.

⁹ Section 373.019(16), F.S. Reasonable-beneficial use is defined as, “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.” See also Fla. Admin. Code R. 62-40.410(2) (2013), for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.

¹⁰ Section 373.223(1), F.S.

plan.¹¹ Regional water supply plans must be based on at least a 20-year planning period and must include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy;
- Consideration of how water supply development projects serve the public interest or save costs;
- Technical data and information;
- Any MFLs established for the planning region;
- The water resources for which future MFLs must be developed; and
- An analysis of where variances may be used to create water supply development or water resource development projects.¹²

Mobile Irrigation Labs

Mobile Irrigation Labs (MILs) consist of one or two person teams that provide site-specific evaluation and analysis of irrigation systems. They provide recommendations for the improvement of existing irrigation systems and equipment, as well as education on water conservation, irrigation planning, and irrigation management. MILs operate within all five WMDs and are supported by four of the WMDs, the Department of Agriculture and Consumer Services, the Natural Resources Conservation Service, and certain counties and utilities.¹³

After evaluating a particular agricultural operation, the MIL provides a report that recommends improvements and irrigation schedules. The schedules offer general guidelines to determine when and how much to irrigate based on system efficiency, crop requirements, and soil characteristics. The program provides for follow-up visits to collect more data and install free soil moisture-sensing devices to help growers adapt the schedule to the site. The program also provides training for farmers to calibrate and maintain the equipment.¹⁴

The North Florida Southeast Georgia Regional Groundwater Flow Model

The North Florida Southeast Georgia (NFSEG) Regional Groundwater Flow Model is currently in development. The general goal of the model is to construct a groundwater flow model that will aid in the assessment of climatic and anthropogenic effects on the groundwater resources of north Florida and southeast Georgia.¹⁵ It will also provide a regional framework for the

¹¹ Section 373.709(1), F.S.

¹² Section 373.709(2), F.S.

¹³ Department of Agriculture and Consumer Services, *Evaluate Your Irrigation System*, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy/Evaluate-Your-Irrigation-System> (last visited Mar. 19, 2015).

¹⁴ DEP, *Statement of Estimated Regulatory Costs*, 24 (Apr. 8, 2015), available at http://www.dep.state.fl.us/water/waterpolicy/docs/mflrulemaking/serc_04_08_2014.pdf (last visited Mar. 19, 2015).

¹⁵ North Florida Regional Water Supply Partnership, *North Florida Southeast Georgia (NFSEG) Regional Groundwater Flow Model: Goals and Objectives Technical Memo*, available at http://northfloridawater.com/pdfs/NFSEG/NFSEG_goals_objectives_final.pdf (last visited Mar. 19, 2015)).

development and application of models for use in assessments of “critical areas of concern.”¹⁶ A “critical area of concern” is an area where there is a particular concern regarding drawdown impacts due to regional and/or local pumping effects. Areas that have been identified as critical areas of concern in the NFSEG Regional Groundwater Flow Model include:

- The Upper Santa Fe Basin;
- The Lower Santa Fe Basin;
- The Upper Suwannee River Basin;
- The Alapaha River Basin; and
- The Upper Etonia Creek Basin.¹⁷

The flow model must be designed and applied such that it will aid in pinpointing the exact sources of impacts on the basin and determine the relative contributions of the various parties involved. One of the ongoing problems the model will be designed to address more accurately is separating climatic impacts from anthropogenic impacts.¹⁸

Legislative Ratification of Agency Rules

Pursuant to s. 120.541(3), F.S., the Legislature must ratify a rule that:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.¹⁹

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.²⁰

Statement of Estimated Regulatory Costs

According to the DEP’s statement of estimated regulatory costs for the proposed MFL rule for the Suwannee River and St. Johns River WMDs, applicants for new CUPs or CUP renewals may be affected by the rule, if the CUP has the potential to impact the MFL.²¹ The DEP anticipates that approximately 28 agricultural water use permit holders will be required to provide offsets under the proposed rule, requiring a total offset of 2.6 million gallons per day (mgd). The DEP also anticipates that, of new permit requests, approximately 40 agricultural users impacted by the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 120.541(2)(a)1.-3., F.S.

²⁰ Section 120.541(3), F.S.

²¹ *Supra* note 14, at 1-2.

rule will have to provide total offsets of 11.2 mgd. The anticipated offset required to accommodate both groups will be 13.8 mgd.²²

If the entire amount of water is offset by implementing additional agricultural water conservation measures via retrofitting center pivot irrigation systems to make them more efficient, the total cost will approach \$3 million over five years.²³ Because the Suwannee River WMD cost-share program typically covers 80 percent of retrofit costs, the actual regulatory burden will likely be significantly less.²⁴ Other possible methods, such as changing withdrawal locations, farming practices, or crop rotation, are difficult to project expected costs for. The development of alternative water supplies for agricultural use as an option to provide offsets will likely be significantly limited by cost and feasibility.²⁵

Proposed Rule 62-42.300, F.A.C.

Proposed Rule 62-42.300, F.A.C., establishes MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs.²⁶ The proposed rule limits the duration of renewed CUPs to five years for existing users that do not request additional allocations to five years if the requested allocation has the potential to affect MFLs in the Lower Santa Fe or Ichetucknee Rivers. CUPs may be issued for longer than five years if the permittee demonstrates that the proposed allocations' impacts on the MFLs will be eliminated or offset.

For a CUP holder that applies for additional allocations in its renewal application that may impact the MFLs in the Lower Santa Fe or Ichetucknee Rivers, the applicant must provide reasonable assurance of elimination or offset of that portion of the requested allocation that exceeds the existing allocation and that results in potential impacts to those water bodies. Such CUPs will be issued for five years unless the potential impacts to the MFLs will be eliminated or offset.

For new CUP applications that impact the MFLs, the entity requesting the permit must provide reasonable assurance that any potential impacts will be eliminated or offset. For existing authorized uses, permits are not subject to modification unless provided for in future rule revisions.

The rule provides for two special conditions on certain CUPs. For a CUP that is issued for more than five years, it must contain a provision stating that the CUP is subject to modification during the term of the permit, upon reasonable notice by the WMD, to achieve compliance with any approved MFL recovery or prevention strategy. The second provision provides that for new or renewed agricultural CUPs in Columbia, Suwannee, Union, and Gilchrist Counties, and portions of Baker, Bradford, and Alachua Counties within the boundaries of the Suwannee River WMD,

²² *Supra* note 14, at 15.

²³ *Supra* note 14, at 17.

²⁴ *Supra* note 14, at 16.

²⁵ *Supra* note 14, at 23.

²⁶ Lower Santa Fe priority springs are: Santa Fe Rise, ALA112971, Hornsby, Columbia, Poe, COL 101974, Rum Island, July, Devil's Ear, and GIL.1012973. Ichetucknee River priority springs are: Ichetucknee Head, Blue Hole, Mission, Devil's Eye, Grassy Hole, and Mill Pond.

the permittee must participate in an MIL program and allow access to the project site for the purpose of conducting an MIL evaluation at least once every five years.

By the publication date of the final peer review report on the NFSEG Regional Groundwater Flow Model, or by December 31, 2019, whichever is earlier, the DEP must:

- Publish a Notice of Proposed Rule to strike Rule 62-42.300(a)-(d), F.A.C., which establishes the MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs;
- Re-propose MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs along with any associated recovery or prevention strategies; and
- Adopt the proposed rule in accordance with the timeframes provided in s. 120.54(3), F.S.

In 2014, the Legislature enacted HB 7171, exempting Rule 62-42.300, F.A.C., from ratification. Subsequently, the rule was challenged in the Department of Administrative Hearings (DOAH). The Administrative Law judge issued a ruling on September 11, 2014, finding that the proposed rule setting the MFLs was vague because the period of record for the flow duration curve and the synthetic data used to generate the curve or, alternatively, a reference to the technical report where the information could be found, was not included.²⁷

On November 7, 2014, a Notice of Change was published, which added the technical information the DOAH judge found was required. The required change did not change the proposed minimum flows or the recovery strategy included in the proposed rule.²⁸ A subsequent DOAH challenge was successfully defended by the DEP.²⁹

III. Effect of Proposed Changes:

The bill ratifies Rule 62-42.300, F.A.C.. The rule establishes MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs.

The bill also:

- Ratifies Rule 62-42.300, F.A.C., for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.;
- Requires the DEP to note its enactment and effective dates in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate;
- Does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

The bill will take effect upon becoming a law.

²⁷ *Still v. Suwannee River Water Management District*, Case No. 14-1420RU (Fla. DOAH 2004).

²⁸ DEP, *Florida Department of Environmental Protection Addendum to April 8, 2014 Statement of Estimated Regulatory Costs*, 2 (Dec. 4, 2014), available at http://www.dep.state.fl.us/water/waterpolicy/docs/mflrulemaking/SERC_add_040814.pdf (last visited Mar. 19, 2015)

²⁹ DEP Office of Water Policy, *MFL Rulemaking*, <http://www.dep.state.fl.us/water/waterpolicy/mflrulemaking.htm> (last visited Mar. 19, 2015).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For CUP renewal applications that affect the MFL for the Lower Santa Fe and Ichetucknee Rivers, if permittees are limited to five year permits, there could be an increase in costs for more frequent permit renewals. The DEP estimates that the total amount of additional application fees will be approximately \$9,000.

According to the DEP, the rule is estimated to cost approximately \$3 million for center-pivot irrigation system retrofits for agricultural permittees affected by the rule. Cost-sharing programs will likely reduce this cost; however, the exact reduction cannot be determined at this time.

CUP restrictions could force agricultural users to diversify their farming practices or implement water conservation measures. The economic impact will be determined by the activities of affected users to accommodate any restrictions placed on operations.

For agricultural operations whose costs increase due to the rule, those costs will likely be passed on to consumers.

C. Government Sector Impact:

Any offsets required under the MFL that are eligible for cost-sharing could result in increased costs, depending on the number of projects that qualify for cost-sharing. This impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Environmental Preservation and Conservation

592-02831-15

20157062__

1 A bill to be entitled
 2 An act relating to ratification of Department of
 3 Environmental Protection rules; ratifying a specified
 4 rule relating to minimum flows and levels and recovery
 5 and prevention strategies, for the sole and exclusive
 6 purpose of satisfying any condition on effectiveness
 7 pursuant to s. 120.541(3), F.S., which requires
 8 ratification of any rule meeting any specified
 9 thresholds for likely adverse impact or increase in
 10 regulatory costs; providing applicability; providing
 11 an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. (1) The following rule is ratified for the sole
 16 and exclusive purpose of satisfying any condition on
 17 effectiveness imposed under s. 120.541(3), Florida Statutes:
 18 Rule 62-42.300, Florida Administrative Code, titled "Minimum
 19 Flows and Levels and Recovery and Prevention Strategies" as
 20 filed for adoption with the Department of State pursuant to the
 21 certification package dated February 18, 2015.

22 (2) This act serves no other purpose and shall not be
 23 codified in the Florida Statutes. After this act becomes law,
 24 its enactment and effective dates shall be noted in the Florida
 25 Administrative Code, the Florida Administrative Register, or
 26 both, as appropriate. This act does not alter rulemaking
 27 authority delegated by prior law, does not constitute
 28 legislative preemption of or exception to any provision of law
 29 governing adoption or enforcement of the rules cited, and is

Page 1 of 2

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

592-02831-15

20157062__

30 intended to preserve the status of any cited rule as a rule
 31 under chapter 120, Florida Statutes. This act does not cure any
 32 rulemaking defect or preempt any challenge based on a lack of
 33 authority or a violation of the legal requirements governing the
 34 adoption of any rule cited.

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

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

Meeting Date

7062

Bill Number (if applicable)

Topic Relating to Ratification of Rules/Minimum Flows

Amendment Barcode (if applicable)

Name Steve Minnis

Job Title Governmental Affairs & Communications Director

Address 9225 CR 49

Street

Phone 386.362.1001

Live Oak

FL

32060

Email sam@srwmd.org

City

State

Zip

Speaking: For Against Information

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

Representing Suwannee River Water Management District

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)

4/16/15

Meeting Date

7062

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Legislative Affairs Director

Address 315 S Calhoun St #850

Phone 222-2587

Street Tallahassee FL 32301

Email adam.basford@ffa.org

City State Zip

Speaking: For Against Information

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

Representing Florida Farm Bureau

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.

5th District

April 1, 2015

The Honorable David Simmons
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons,

I respectfully request you place Senate Bill 7062, relating to Ratification of Department of Environmental Protection Rules, on your Rules Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: John Phelps, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1372

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Gaetz

SUBJECT: Government Accountability

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	Stearns	Yeatman	CA	Fav/CS
3.	Carlton	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1372 is an omnibus government accountability bill. The bill includes changes to Florida's governmental ethics policies including broadening the water management district lobbyist registration provisions to apply to many more special districts, and applying post-employment lobbying restrictions to certain individuals with Enterprise Florida, its divisions, and the Florida Development Finance Corporation.

The bill also requires local governmental entities to keep their final budgets, and any amendments thereto, on their website for a period of 2 years after adoption.

The bill requires various governmental entities to adopt internal controls to prevent and detect fraud, waste, and abuse.

The bill makes it a first degree misdemeanor to provide prohibited compensation. The bill requires governmental entities to investigate claims of unauthorized compensation and authorizes litigation to enforce the civil penalty and treble damages provisions. Finally, it provides a reward structure and extends Whistle-blower's Protection Act coverage to those reporting prohibited compensation. The bill also makes compensation claims in violation of s. 215.425, F.S., a false claim against the state. Thus, the state would be authorized to sue to recover damages and civil penalties as provided in ss. 68.082 and 68.083, F.S. (The False Claims Act). Additionally, the Department of Financial Services is authorized to file suit under the False Claims Act.

The bill allows the Governor or Commissioner of Education, or their designees, to report that a local governmental entity has failed to comply with applicable auditing, financial reporting, bond issuance notification, bond verification provisions, or failed to disclose a financial emergency or provide information required during a financial emergency. It increases the Single Audit Act threshold from \$500,000 to \$750,000 and allows the Auditor General to review the threshold periodically and make appropriate recommendations to the Legislature. It makes changes to the financial reporting requirements and independent audit requirements. The bill specifies who can serve as members of the auditor selection committees for local governmental entities. It requires the Florida Virtual School to have an independent financial audit each year.

If an audit report of a school district, Florida College System institution, or other institution or agency under the supervision of the State Board of Education and state universities under the supervision of the Board of Governors includes a recommendation that was in the preceding financial audit report, the entity must indicate its intent regarding corrective action within 60 days after the delivery of the audit report. This response must occur during a regularly scheduled public meeting.

The bill also requires the Florida Clerk of Courts Corporation to notify the Legislature quarterly of any clerk of court not meeting workload requirements and provide corrective action plans within 45 days of the end of the quarter.

The bill requires a water management district monthly financial report to be provided in the format required by the Department of Financial Services.

Finally, the Governor or the Commissioner of Education must notify the Legislative Auditing Committee of financial emergencies instead of notifying the members of the Legislative Auditing Committee.

II. Present Situation:

For the purposes of this bill analysis, the Present Situation will be addressed in the Effect of Proposed Changes section below.

III. Effect of Proposed Changes:

Statement of Legislative Findings and Intent

The bill explains that the intent of the bill is to prevent fraud, waste, and abuse, and to safeguard government resources. Specifically, section 31 of the bill provides: “The Legislature finds that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. Therefore, the Legislature determines and declares that this act fulfills an important state interest.”

Governmental Ethics Laws

Collection Methods for Unpaid Financial Disclosure Fines

Present Situation:

Section 112.31455, F.S., authorizes the Florida Commission on Ethics to engage in common-law withholding of wages and to seek garnishment in order to collect unpaid financial disclosure fines. Prior to referring such a fine to the Department of Financial Services, the Florida Commission on Ethics must attempt to determine whether or not the filer is a current public officer or public employee.¹ If the person is currently a public officer or public employee, the Florida Commission on Ethics may notify the Chief Financial Officer or the governing body of the appropriate county, municipality, or special district of the total amount of the fine owed to the Florida Commission on Ethics. After receipt and verification of the notice from the Florida Commission on Ethics, the appropriate governing body is required to begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment. The withheld payments shall be remitted to the Florida Commission on Ethics until the fine is satisfied. Additionally, the Chief Financial Officer or appropriate governing body may retain an amount from each withheld payment to cover administrative costs incurred under s. 112.31455(1)(b), F.S. In the event that the Florida Commission on Ethics determines that the person is no longer a public officer, or is unable to make such a determination, the Florida Commission on Ethics must wait for 6 months. After that period of time, the Florida Commission on Ethics can seek garnishment pursuant to ch. 77, F.S. Additionally, the Florida Commission on Ethics can refer the unpaid fine to a collection agency.² The collection agency can use any legal tool it may possess to collect the unpaid fine. The statute of limitations for an unpaid financial disclosure fine is 20 years.³

Effect of Proposed Changes:

The bill amends s. 112.31455, F.S., in two ways. First, the bill expressly authorizes school districts to withhold public salary-related payments after receiving notice from the commission that an employee has an unpaid fine, including a portion to cover any administrative costs incurred under this section.

Secondly, the bill creates s. 112.31456, F.S., and moves the authority to seek garnishment of wages to that section. None of those provisions are changed from existing law.

Lobbying Registration and Reporting Requirements for Certain Districts

Present Situation:

Section 112.3261, F.S., requires a person who seeks to lobby a water management district to register as a lobbyist before he or she begins to lobby. The lobbyist must present a signed statement authorizing him or her to act on the principal's behalf. The statement must also state the principal's main business. Changes to this information must be reported within 15 days. Water management districts may create their own lobbyist registration forms or use a legislative or executive branch lobbyist registration form. Districts are required to be diligent in ascertaining whether lobbyists have properly registered and may not knowingly allow a lobbyist to lobby if

¹ Section 112.31455(1), F.S.

² Section 112.31455(3), F.S.

³ Section 112.31455(4), F.S.

he or she is not registered. The Florida Commission on Ethics is charged with investigating complaints alleging that a lobbyist has failed to register or provided false information in a report or registration. The Governor has the authority to enforce the Florida Commission on Ethics' findings and recommendation. The water management districts were granted rulemaking authority to adopt rules and establish procedures to govern lobbyist registration, including the adoption of forms and the establishment of a lobbyist registration fee not to exceed \$40.

Effect of Proposed Changes:

The bill expands the scope of these lobbyist registration and reporting requirements to apply to hospital districts, a children's services district, expressway authorities, port authorities, or any independent special district with annual revenues of more than \$5 million which exercises ad valorem taxing authority.

Post Service Lobbying Restrictions

Present Situation:

Section 288.92, F.S., authorizes Enterprise Florida to create and dissolve divisions as necessary to carry out its mission. That section also requires Enterprise Florida to have certain divisions. The law also provides for hiring of officers and members of the divisions of Enterprise Florida and subjects certain officers and members to several standards of conduct in the Code of Ethics for Public Officers and Employees.⁴ The law currently does not contain any post-employment or post-service restrictions.

The Florida Development Finance Authority is created in s. 288.9604, F.S. That provision addresses appointment of members of the board of directors and powers of the corporation. It also subjects directors to several standards of conduct in the Code of Ethics for Public Officers and Employees.⁵ The law currently does not contain any post-employment or post-service restrictions.

Effect of Proposed Changes:

The bill prohibits officers and members of the boards of directors of the divisions of Enterprise Florida, subsidiaries of Enterprise Florida, corporations created to carry out the missions of Enterprise Florida, and corporations with which a division is required by law to contract to carry out its missions, from representing another person or entity for compensation before Enterprise Florida, Inc., divisions of Enterprise Florida, subsidiaries of Enterprise Florida, corporations created to carry out the missions of Enterprise Florida, and corporations with which a division is required by law to contract to carry out its missions, for a period of 2 years after retirement or termination of service to a division.

The bill also prohibits directors of the Florida Development Finance Authority from representing another person or entity for compensation before the corporation, for a period of 2 years after retirement or termination of service.

⁴ Part III, Chapter 112, Florida Statutes.

⁵ Part III, Chapter 112, Florida Statutes.

Online Posting of Governmental Budgets

Counties, Municipalities, and Special Districts

Present Situation:

Counties⁶, municipalities⁷, and special districts⁸ are required to post their tentative budgets on their websites 2 days prior to consideration of the budget. The final budget of a county, municipality or special district must be posted on the county's, municipality's, or special district's website within 30 days after adoption. An amendment to a budget must be posted to the county's, municipality's, or special district's website within 5 days of adoption. Current law does not specify how long those items must remain available on the website.

Effect of Proposed Changes:

The bill requires the tentative budget to remain on the county's, municipality's, or special district's website for at least 45 days. The bill also requires that the final adopted budget must remain on the county's, municipality's, or special district's website for at least 2 years. Finally, the bill requires an adopted amendment to the budget to remain on a county's, municipality's, or special district's website for at least 2 years.

Water Management Districts

Present Situation:

Chapter 373 governs Florida's water resource management. That chapter includes provisions authorizing the creation of water management districts and provides those districts with taxing authority. Section 373.536, F.S., governs water management districts' budget process. That section also requires financial audits, 5-year capital improvement plans, and 5-year water resource development work programs. All of these items must be submitted to the Department of Environmental Protection as specified in s. 373.536(6), F.S. The tentative budget is required to be posted on the water management district's website at least 2 days before the budget hearings are conducted. The law requires the final budget to be posted on the district's official website within 30 days of adoption.

Effect of Proposed Changes:

The bill requires the tentative budget to remain on the district's website for at least 45 days. The bill requires the final budget to remain on the district's website for at least 2 years.

Internal Controls to Prevent and Detect Fraud, Waste, and Abuse

Present Situation:

State Agencies and the Judicial Branch: Section 215.86, F.S., provides:

Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. Accounting systems and procedures shall

⁶ Section 129.03, F.S.

⁷ Section 166.241, F.S.

⁸ Section 189.016, F.S.

be designed to fulfill the requirements of generally accepted accounting principles.

Local Governmental Entities: Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity shall follow uniform accounting practices and procedures as provided by rule of the department to assure the use of proper accounting and fiscal management by such units. Such rules shall include a uniform classification of accounts.

Charter Schools: Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to the creation of charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law requires that the governing body of a charter school is responsible for: ensuring that the charter school has retained a certified public accountant to perform its annual audit; reviewing the audit report; establishing a corrective plan, if necessary; monitoring a financial recovery plan to ensure compliance; and, participating in governance training approved by the Department of Education. That governance training is required to address government in the sunshine, conflicts of interest, ethics, and financial responsibility.

School Districts and Florida College System Institutions: The financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the State Board of Education shall be prepared and maintained as prescribed by law and rules of the State Board of Education. The financial records and accounts of each state university under the supervision of the Board of Governors shall be prepared and maintained as prescribed by law and rules of the Board of Governors. Rules of the State Board of Education and rules of the Board of Governors shall incorporate the requirements of law and accounting principles generally accepted in the United States. Such rules shall include a uniform classification of accounts. Each state university shall annually file with the Board of Governors financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the Board of Governors. The Board of Governors' rules shall prescribe the filing deadline for the financial statements. Required financial accounts and reports shall include provisions that are unique to each of the following: K-12 school districts, Florida College System institutions, and state universities, and shall provide for the data to be reported to the National Center of Educational Statistics and other governmental and professional educational data information services as appropriate.

Justice Administration Commission: The Justice Administration Commission is created in s. 43.16, F.S. Among its duties, the Commission is charged with maintaining a central state office for administrative services and assistance when possible, and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program. Additionally, the Commission records and submits necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans that were created by the state attorney, public defender, and criminal conflict and civil regional counsel and the Guardian Ad Litem Program.

Effect of Proposed Changes:

The bill requires each entity⁹ to maintain internal controls designed to: prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices; support economic, efficient, and effective operations; ensure reliability of records and reports; and, safeguard assets.

Extra Compensation Claims and False Claims Act Changes***Extra Compensation Claims*****Present Situation:**

Section 215.425, F.S., prohibits extra compensation to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year. That section also requires a contract or employment agreement, or renewal of a contract or employment agreement, containing a provision for severance pay to limit severance pay to 20 weeks and to prohibit severance pay when the individual is terminated for misconduct.

Effect of Proposed Changes:

The bill defines “public funds” as:

any taxes, tuition, grants, fines, fees, or other charges or any other type of revenue collected by the state or any county, municipality, special district, school district, Florida College System institution, state university, or other separate unit of government created pursuant to law, including any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, or institution of such entities.

The bill clarifies that there can be no violation of s. 215.425, F.S., for payment of a bonus or severance pay that is paid from sources other than public funds.

The bill requires a unit of government that has made a prohibited compensation payment to investigate and take all actions necessary to recover the prohibited compensation. If the compensation was provided unintentionally, the unit of government must recover the prohibited compensation through its normal recovery methods. If the prohibited payment was willfully made, the unit of government must recover the payment from either the recipient or the person who authorized the prohibited payment. Willfully providing a prohibited payment would become a first degree misdemeanor under the bill. The bill provides for suspension and removal of officers as follows: An officer who exercises the powers and duties of a state or county office may be suspended by the Governor and removed by the Florida Senate. Any other officer may be suspended and removed by the Governor pursuant to s. 112.51, F.S.

⁹ This includes each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem program.

A person who reports the making of a prohibited extra compensation payment is eligible for a reward of at least \$500, or the lesser of 10 percent of the funds recovered or \$10,000 per incident. There is an exception to the reward provision where the recovery of the prohibited compensation is based on disclosures of information relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, inspector general, or other government report; auditor general report, hearing, audit, or investigation; or from the news media. If the person was involved in the authorization, or was convicted for his role in the unauthorized compensation, he or she is not eligible for the reward. Whistle-blowers are granted full protection under the Whistle-blower's Act.¹⁰

If the unit of government fails to recover the prohibited extra compensation payment within 90 days, a lawsuit is authorized to recover those funds using the legal procedures in ss. 68.082, (governing false claims against the state) and 68.083, F.S., (governing civil actions for false claims). Litigation to recover such funds must be brought in the circuit court of the county in which the unit of local government is located.

False Claims Against the State

Present Situation:

Section 68.082, F.S., prohibits a person from:

- Knowingly presenting a false or fraudulent claim for payment or approval;
- Knowingly making or using a false record or statement material to a false or fraudulent claim;
- Conspiring to commit a violation of this subsection;
- Having possession, custody, or control of property or money used or to be used by the state and knowingly delivering less than all of that money or property;
- Making or delivering a document certifying receipt of property used or to be used by the state and, intending to defraud the state, making or delivering the receipt without knowing that the information on the receipt is true;
- Knowingly buying or receiving, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly making or using a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state.

A person who does any of the foregoing is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the state sustains.

Section 68.083, F.S., authorizes the Department of Legal Affairs to investigate an allegation of a false claim against the state. If the Department of Legal Affairs determines a violation has occurred, it is authorized to commence a civil action against the violator. Additionally, the Department of Financial Services may bring such a suit if the Department of Legal Affairs has not done so.

¹⁰ Section 112.3187, F.S.

Effect of Proposed Changes:

The bill makes it a “false claim against the state” for any person to knowingly authorize, approve, or receive payment of prohibited extra compensation in violation of s. 215.425, F.S. A person who authorizes, approves, or receives payment of prohibited extra compensation is subject to the civil penalty ranging from \$5,500 to \$11,000 and for treble the amount of damages that the state sustains as a result of the authorization, approval, or receipt of prohibited compensation.

The bill authorizes the Department of Financial Services to bring a civil action if the action arises from an investigation by that Department concerning a violation of the prohibited extra compensation claim and the Department of Legal Affairs has not filed an action to recover the civil penalty and damages.

Auditing***Joint Legislative Auditing Committee*****Present Situation:**

Section 11.40, F.S., provides:

Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7),¹¹ s. 218.32(1),¹² s. 218.38,¹³ or s. 218.503(3),¹⁴ the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action.

Section 11.45, F.S., defines the types of audits that may be conducted. That section requires the Auditor General to conduct certain state and local governmental audits and specifies the frequency with which the audits must occur. Section 11.45, F.S., also allows the Auditor General to conduct other audits he or she determines to be appropriate. For purposes of s. 11.45, F.S., the term local governmental entity means “a county agency, municipality, or special district as defined in s. 189.012, but does not include any housing authority established under chapter 421.”

The Auditor General is required to transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

¹¹ Section 11.45, F.S., governs certain audits to be conducted by the Auditor General.

¹² Section 218.32(1), F.S., requires annual financial reports from local governmental entities.

¹³ Section 218.38, F.S., requires notice of bond issuance and contains verification requirements.

¹⁴ Section 218.503(3), F.S., requires those entities to disclose a financial emergency and provide certain information concerning a financial emergency.

Effect of Proposed Changes:

The bill provides that the Governor or his or her designee, or the Commissioner of Education or his or her designee, may also notify the Joint Legislative Auditing Committee that a local governmental entity has failed to comply with applicable auditing, financial reporting, bond issuance notification, bond verification provisions, or failed to disclose a financial emergency or provide information required during a financial emergency.

The bill defines the terms “abuse,” “fraud,” and “waste” in s. 11.45, F.S., as follows:

- “Abuse” means behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.
- “Fraud” means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity’s assets, bribery, or the use of one’s position for personal enrichment through the deliberate misuse or misapplication of an organization’s resources.
- “Waste” means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

The bill also redefines the term “Local governmental entity” for purposes of s. 11.45, F.S., to include tourist development councils and county tourism promotion agencies.

The bill exempts water management districts from being subject to audits pursuant to s. 11.45(2)(j), F.S. The bill allows the Auditor General to conduct audits or other engagements of tourist development councils and county tourism promotion agencies. The bill also conforms the Auditor General’s reporting requirement to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, by removing the obsolete reference to water management districts and replacing it with the phrase “local governmental entity.”

Single Audit Act**Present Situation:**

The Florida Single Audit Act, s. 215.97, F.S., is designed to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects; promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities; promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities; provide for identification of state financial assistance transactions in the state accounting records and recipient organization records; promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and, ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities. Pursuant to the Single Audit Act, certain entities that exceed the “audit threshold” are subject to a state single audit or a project specific audit. Currently, the “audit threshold” is defined as:

the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust such threshold amount consistent with the purposes of this section. Section 215.97(2)(a), F.S.

Effect of Proposed Changes:

The bill changes the audit threshold from \$500,000 to \$750,000. Additionally, the bill changes the requirement that the Auditor General review the threshold amount for requiring audits from every 2 years to “periodically.” The term “periodically” is not defined in the bill. Finally, the bill authorizes the Auditor General to recommend to the Legislature a statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(f), F.S.

Local Government Entity Annual Financial Reports

Present Situation:

Section 218.32, F.S., requires certain local governmental entities to submit an annual financial report for the previous fiscal year. The annual financial report is required to be signed by the chair of the governing body and the chief financial officer of the local governmental entity. That section also specifies what information is required to be in the report.

Additionally, the Department of Financial Services is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.¹⁵

Effect of Proposed Changes:

The bill requires an independent certified public accountant completing an audit of a unit of local government pursuant to s. 218.39, F.S., to report, as part of the audit, whether or not the entity’s annual financial report is in agreement with the audit report. The accountant’s audit report must be supported by the same level of detail required for the annual financial report. If the reports are not in agreement, the bill requires the audit to specify the differences that exist between the annual financial report and the audit report.

The bill also provides that, in preparing the verified report, the Department of Financial Services may request additional information from the local governmental entity. Any additional information requested must be provided within 45 days of the request. If the local governmental

¹⁵ Section 218.32(2), F.S.

entity does not comply with the request, the Department of Financial Services must notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

Annual Financial Audit Reports

Present Situation:

If certain types of governmental entities are not notified by the first day of the fiscal year that they will be audited by the Auditor General, those entities must have an annual financial audit performed by an independent certified public accountant completed within 9 months.¹⁶ Section 218.39, F.S., lays out the minimum required information for the independent audits and provides for discussion between the governing body and the independent certified public accountant regarding certain specified conditions. If corrective action is required and has not been taken, the Legislative Auditing Committee can request a statement explaining why the corrective action has not been taken and provides for corrective steps including actions pursuant to s. 11.40(2), F.S.

Effect of Proposed Changes:

The bill provides that if the audit report contains a recommendation from the preceding financial audit report, the governing body, within 60 days, must indicate its intent regarding corrective action, the corrective action to be taken, and when the corrective action will occur. If the governing body does not intend to take any corrective action, it shall explain why such action will not be taken at the regularly scheduled public meeting.

Auditor Selection Procedures

Present Situation:

Section 218.391, F.S., lays out the process that specified governmental entities¹⁷ must follow in selecting its independent certified public accountant to act as an auditor. Noncharter counties are required to create a committee consisting of each of its elected county constitutional officers and one member of the board of county commissioners or their designee. Those entities must create an audit committee which must make a request for proposals. The law lays out what must be considered in selecting the firm and discusses negotiating for compensation.

Effect of Proposed Changes:

The bill requires all counties to have an auditor selection committee consisting of each of its officers elected pursuant to the county charter or Florida Constitution. The bill requires municipalities, special districts, district school boards, charter schools, or charter technical career centers to create an audit committee with at least three members, one of which must be a member of the governing body of the entity. That member will serve as the committee's chair. Members of county, municipal, or special district audit committees may not exercise financial management responsibilities for the county, municipality, or special district. The bill provides that the contract period may not exceed 5 years. The bill creates a 2-year period of ineligibility for a firm to get a new contract after its 5-year contract has expired.

The audit report submitted pursuant to s. 218.39, F.S., must include an affidavit executed by the chair of the audit committee affirming that the committee complied with the auditor selection

¹⁶ Section 218.39, F.S.

¹⁷ The entities are: the governing body of a charter county, municipality, special district, district school board, charter school, or charter technical career center.

requirements. If the Auditor General determines that an entity failed to comply with the requirements in selecting an auditor, the entity shall select a replacement auditor to conduct audits for the remaining subsequent fiscal year(s) remaining in the contract.

The Florida Virtual School

Present Situation:

The Florida Virtual School is created to develop and deliver online and distance learning. The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education. The report is required to address: operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global; marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology; assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year; a copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General; recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and, recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.¹⁸

The Auditor General is required to conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global. The scope of the audit must include, but not be limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds, including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The final report on the audit shall be submitted to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2014.

Effect of Proposed Changes:

The bill eliminates the requirement that the Auditor General conduct an operation audit and report to the President of the Senate and the Speaker of the House of Representatives by January 31, 2014. That provision is replaced with requiring the Florida Virtual School to have an annual financial audit of its accounts and records completed by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with the rules adopted by the Auditor General governing such audits. The audit report is required to include a written statement of the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. Upon completion of the audits, the independent auditor is required to submit an audit report to the board of trustees and the Auditor General no later than 9 months after the end of the prior fiscal year. The bill also makes conforming changes to the annual report provided to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education, by requiring a copy of the audit report be submitted with the annual statement. That audit report is to provide a written statement

¹⁸ Section 1002.37(6), F.S.

of the board of trustees describing corrective action to be taken in response to each finding of the independent auditor's recommendations included in the audit report.

Required Audits of Certain Educational Institutions

Present Situation:

School districts, Florida College System institutions, and other institutions and agencies under the supervision of the State Board of Education and state universities under the supervision of the Board of Governors are subject to the audit provisions of ss. 11.45 and 218.39, F.S. If an audit contains a significant finding, the district school board, the Florida College System institution board of trustees, or the university board of trustees shall conduct an audit overview during a public meeting.

Effect of Proposed Changes:

If any audit report includes a recommendation that was previously included in the preceding financial audit report, the district school board, the Florida College System institution board of trustees, or the university board of trustees, must indicate its intent regarding corrective action, the corrective action to be taken, and when the corrective action will occur within 60 days after the delivery of the audit report. This response must occur during a regularly scheduled public meeting. If the district school board, Florida College System institution board of trustees, or university board of trustees does not intend to take corrective action, it shall explain why such action will not be taken at the regularly scheduled public meeting.

Other Provisions

Florida Clerk of Courts Corporation

Present Situation:

Currently, s. 28.35, F.S., requires the Florida Clerk of Courts Corporation to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation shall develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation shall notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

Effect of Proposed Changes:

The bill requires the Florida Clerk of Courts Corporation to notify the Legislature of any clerk not meeting the workload performance standards and provide a copy of any corrective action plans within 45 days after the end of each quarter. For purposes of s. 28.35, F.S., the quarters end on the last day of March, June, September, and December of each year.

Transparency in Government Spending

Present Situation:

The Transparency Florida Act, located in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. That law requires certain budget information to be readily available online, certain contract information, and minimum functionality standards. In pertinent part, s. 215.985(11), F.S., requires: “Each water management district shall provide a monthly financial statement to its governing board and make such statement available for public access on its website.”

Effect of Proposed Changes:

The bill requires the monthly financial statement to be in the form and manner prescribed by the Department of Financial Services to the district’s governing board and make such monthly financial statement available to the public on its website.

Financial Emergencies

Present Situation:

Local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, under certain circumstances.¹⁹ If a financial emergency occurs, the Governor or the Commissioner of Education must contact the entity to determine what steps have been taken to rectify, resolve, or prevent the financial emergency. Any information requested must be provided within 45 days. If the local governmental entity or the district school board does not comply with the request, the Governor or Commissioner of Education must notify the *members* of the Legislative Auditing Committee who may take action pursuant to s. 11.40, F.S. The Governor or the Commissioner of Education must then determine whether the entity needs state assistance. If so, the entity is considered to be in a state of financial emergency. The Governor or the Commissioner of Education then has the authority to take steps to resolve the financial emergency.²⁰

Effect of Proposed Changes:

The bill provides that the Governor, or his or her designee, or the Commissioner of Education, or his or her designee, must notify the Legislative Auditing Committee instead of notifying the members of the Legislative Auditing Committee.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments to establish and maintain specified internal controls. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. An exemption also may

¹⁹ Section 218.503(1), F.S.

²⁰ Section 218.503(3), F.S.

apply because similarly situated persons are all required to comply and the bill articulates a threshold finding of serving an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires members of the public to register as a lobbyist when lobbying a specified unit of local government. Current law authorizes a fee for each registration, which may not exceed \$40.

C. Government Sector Impact:

The bill requires state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities to establish specified internal controls. Such requirement may require additional time and expense to create the internal controls.

The bill amends provisions related to the prohibition against extra compensation. It requires investigations of allegations and repayment of any prohibited compensation. It also requires the payment of rewards to individuals who report violations. The changes may result in the recovery of prohibited payments, but it also will have an associated increased workload cost for investigations and the payment of rewards.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.31456 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 28.35, 43.16, 112.31455, 112.3261, 129.03, 129.06, 166.241, 189.016, 215.425, 215.86, 215.97, 215.985, 218.32, 218.33, 218.39, 218.391, 288.92, 288.9604, 373.536, 1002.33, 1002.37, 1010.01, 1010.30, 68.082, 68.083, and 218.503.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Community Affairs on March 31, 2015:

Clarifies that the definition of “abuse” includes the misuse of authority or position for personal gain.

Reverts to the existing law regarding the withholding of a salary payment related to a public employee’s unpaid fine that resulted from an improper financial disclosure. Requires a school district that has received notification from the Florida Commission on Ethics that a current public employee owes such an unpaid fine to withhold the lesser of 10 percent or the amount allowed under federal law from any salary-related payment. The amended bill also authorizes the school district to withhold additional funds to offset the administrative costs of implementing these withholdings.

CS by Ethics and Elections on March 24, 2015:

- Allows the Auditor General to conduct audits or other engagements of tourist development councils and county tourism promotion agencies;
- Requires a governing body to withhold 25 percent of the amount of the fine from the filer’s next public salary-related payment, plus any administrative costs incurred;
- Requires withholding the same percentage of each successive public salary-related payment until the fine and administrative costs are paid in full;
- Defines “public funds” for purposes of the prohibited compensation statute in s. 215.425, F.S.;
- Clarifies that it is not prohibited compensation to pay a bonus or severance pay from sources other than public funds;
- Provides that state or county officers making or receiving prohibited compensation may be suspended by the Governor and removed by the Florida Senate;
- Allows the Governor to suspend and remove any other officer who makes or receives prohibited compensation pursuant to s. 112.51, F.S.;
- Requires the accountant’s audit to be supported by the same level of detail required for the annual financial report;
- Provides that the contract period may not exceed 5 years;
- Creates a 2-year period of ineligibility for a firm to get a new contract after its 5-year contract has expired;
- Requires the audit report submitted pursuant to s. 218.39, F.S., to include an affidavit executed by the chair of the audit committee affirming that the committee complied with the auditor selection requirements;
- Provides that entities that fail to comply with the requirements in selecting an auditor must replace the auditor for the remaining term of the contract;

- Extends applicability of the 2 year post-service lobbying restriction to prohibit representation before a division of Enterprise Florida, subsidiary of Enterprise Florida, or the board of directors of corporations created to carry out the missions of Enterprise Florida, Inc., or with which a division is required by law to contract to carry out its missions;
- Requires Florida Virtual Schools to include a written statement describing corrective action to be taken in response to each of the independent auditor's recommendations;
- Requires Florida Virtual Schools to submit its audit report in its annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education; and
- Provides new effective date of October 1, 2015.

B. Amendments:

None.



897662

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/15/2015	.	
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The Committee on Rules (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Between lines 382 and 383
insert:

Section 1. Subsection (7) of section 112.313, Florida
Statutes, is amended to read:

112.313 Standards of conduct for public officers, employees
of agencies, and local government attorneys.—

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have
or hold any employment or contractual relationship with any



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12 business entity or any agency which is subject to the regulation
13 of, or is doing business with, an agency of which he or she is
14 an officer or employee, excluding those organizations and their
15 officers who, when acting in their official capacity, enter into
16 or negotiate a collective bargaining contract with the state or
17 any municipality, county, or other political subdivision of the
18 state; nor shall an officer or employee of an agency have or
19 hold any employment or contractual relationship that will create
20 a continuing or frequently recurring conflict between his or her
21 private interests and the performance of his or her public
22 duties or that would impede the full and faithful discharge of
23 his or her public duties. A contractual relationship held by a
24 business entity in which a public officer or an employee of an
25 agency holds a controlling interest or is an officer, director,
26 or managing member constitutes a contractual relationship
27 prohibited by this subsection.

28 1. When the agency referred to is that certain kind of
29 special tax district created by general or special law and is
30 limited specifically to constructing, maintaining, managing, and
31 financing improvements in the land area over which the agency
32 has jurisdiction, or when the agency has been organized pursuant
33 to chapter 298, then employment with, or entering into a
34 contractual relationship with, such business entity by a public
35 officer or employee of such agency shall not be prohibited by
36 this subsection or be deemed a conflict per se. However, conduct
37 by such officer or employee that is prohibited by, or otherwise
38 frustrates the intent of, this section shall be deemed a
39 conflict of interest in violation of the standards of conduct
40 set forth by this section.



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41 2. When the agency referred to is a legislative body and
42 the regulatory power over the business entity resides in another
43 agency, or when the regulatory power which the legislative body
44 exercises over the business entity or agency is strictly through
45 the enactment of laws or ordinances, then employment or a
46 contractual relationship with such business entity by a public
47 officer or employee of a legislative body shall not be
48 prohibited by this subsection or be deemed a conflict.

49 (b) A public officer serving on a county or municipal
50 board, commission, authority, or council who is a member,
51 associate, partner, shareholder, or employee of a firm of
52 licensed professionals is subject to the following:

53 1. A public officer has a contractual relationship only
54 with those clients of the firm:

55 a. For whom he or she has personally performed services;

56 b. Who are clients of a member, associate, partner,
57 shareholder, or employee of the firm who is supervised by, may
58 be terminated by, or whose compensation can be changed by the
59 public officer; or

60 c. Who provide compensation to the public officer which is
61 identifiable as earned from representation of the clients.

62 2. A prohibited continuing or frequently recurring conflict
63 between a public officer's private interests and the performance
64 of his or her public duties does not exist if a member,
65 associate, partner, shareholder, or employee of the public
66 officer's firm infrequently represents a client, other than
67 those described in subparagraph 1., and if:

68 a. The jurisdiction of the board, commission, authority, or
69 council is not limited to the primary practice area of the firm;



70 b. The public officer does not vote, participate, or
71 attempt to influence the outcome of the matter and he or she
72 makes full disclosure of and is in compliance with the
73 requirements of s. 112.3143 and 286.012; and

74 c. The representation by other members, associates,
75 partners, shareholders, or employees of the firm does not result
76 in the public officer abstaining from voting in more than 1
77 percent of the votes, not including procedural votes, in any 12-
78 month period. If abstentions by the public officer as a result
79 of representation by other members, associates, partners,
80 shareholders, or employees of the firm exceed 1 percent in any
81 12-month period, any such future representation shall be deemed
82 a conflict between the public officer's private interests and
83 the performance of his or her public duties for the remainder of
84 the public officer's term.

85 3. This paragraph does not relieve or discharge a public
86 officer or any other individual representing clients before a
87 board, commission, authority, or council from the applicable
88 rules of professional conduct, duties, or responsibilities
89 imposed by the appropriate licensing or regulatory body for the
90 applicable profession.

91 (c) This subsection ~~shall~~ does not prohibit a public
92 officer or employee from practicing in a particular profession
93 or occupation when such practice by persons holding such public
94 office or employment is required or permitted by law or
95 ordinance.

96
97 ===== T I T L E A M E N D M E N T =====

98 And the title is amended as follows:



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99 Delete line 26
100 and insert:
101 controls; amending s. 112.313, F.S.; specifying that
102 prohibitions on conflicting employment or contractual
103 relationships for public officers or employees of an
104 agency apply to contractual relationships held by
105 certain business entities; specifying circumstances
106 under which a public officer serving on a county or
107 municipal board, commission, authority, or council is
108 subject to conflicting employment or contractual
109 relationship restrictions; amending s. 112.31455,
110 F.S.; correcting a



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/15/2015	.	
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The Committee on Rules (Gaetz) recommended the following:

Senate Amendment to Amendment (897662)

Delete lines 23 - 27

and insert:

his or her public duties. For purposes of this subsection, if a public officer or employee of an agency holds a controlling interest in a business entity or is an officer, director, or a member who manages such an entity, contractual relationships held by the business entity are deemed to be held by the public officer or employee.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/15/2015	.	
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The Committee on Rules (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 408 - 649

and insert:

Section 6. Section 112.3261, Florida Statutes, is amended to read:

112.3261 Lobbying before governmental entities ~~water management districts~~; registration and reporting.—

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

(a) "Governmental entity" or "entity" ~~"District"~~ means a water management district created in s. 373.069 and operating



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12 under the authority of chapter 373, a hospital district, a
13 children's services district, an expressway authority as the
14 term "authority" is defined in s. 348.0002, the term "port
15 authority" as defined in s. 315.02, a county or municipality
16 that has not adopted lobbyist registration and reporting
17 requirements, or an independent special district with annual
18 revenues of more than \$5 million which exercises ad valorem
19 taxing authority.

20 (b) "Lobbies" means seeking, on behalf of another person,
21 to influence a governmental entity ~~district~~ with respect to a
22 decision of the entity ~~district~~ in an area of policy or
23 procurement or an attempt to obtain the goodwill of an a
24 ~~district~~ official or employee of a governmental entity. The term
25 "lobbies" shall be interpreted and applied consistently with the
26 rules of the commission implementing s. 112.3215.

27 (c) "Lobbyist" has the same meaning as provided in s.
28 112.3215.

29 (d) "Principal" has the same meaning as provided in s.
30 112.3215.

31 (2) A person may not lobby a governmental entity ~~district~~
32 until such person has registered as a lobbyist with that entity
33 ~~district~~. Such registration shall be due upon initially being
34 retained to lobby and is renewable on a calendar-year basis
35 thereafter. Upon registration, the person shall provide a
36 statement signed by the principal or principal's representative
37 stating that the registrant is authorized to represent the
38 principal. The principal shall also identify and designate its
39 main business on the statement authorizing that lobbyist
40 pursuant to a classification system approved by the governmental



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41 entity ~~district~~. Any changes to the information required by this
42 section must be disclosed within 15 days by filing a new
43 registration form. The registration form shall require each
44 lobbyist to disclose, under oath, the following:

45 (a) The lobbyist's name and business address.

46 (b) The name and business address of each principal
47 represented.

48 (c) The existence of any direct or indirect business
49 association, partnership, or financial relationship with an
50 official ~~any officer~~ or employee of a governmental entity
51 ~~district~~ with which he or she lobbies or intends to lobby.

52 (d) A governmental entity shall create a lobbyist
53 registration form modeled after the ~~In lieu of creating its own~~
54 ~~lobbyist registration forms, a district may accept a completed~~
55 legislative branch or executive branch lobbyist registration
56 form, which must be returned to the governmental entity.

57 (3) A governmental entity ~~district~~ shall make lobbyist
58 registrations available to the public. If a governmental entity
59 ~~district~~ maintains a website, a database of currently registered
60 lobbyists and principals must be available on the entity's
61 ~~district's~~ website.

62 (4) A lobbyist shall promptly send a written statement to
63 the governmental entity ~~district~~ canceling the registration for
64 a principal upon termination of the lobbyist's representation of
65 that principal. A governmental entity ~~district~~ may remove the
66 name of a lobbyist from the list of registered lobbyists if the
67 principal notifies the entity ~~district~~ that a person is no
68 longer authorized to represent that principal.

69 (5) A governmental entity ~~district~~ may establish an annual



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70 lobbyist registration fee, not to exceed \$40, for each principal
71 represented. The governmental entity ~~district~~ may use
72 registration fees only to administer this section.

73 (6) A governmental entity ~~district~~ shall be diligent to
74 ascertain whether persons required to register pursuant to this
75 section have complied. A governmental entity ~~district~~ may not
76 knowingly authorize a person who is not registered pursuant to
77 this section to lobby the entity ~~district~~.

78 (7) Upon receipt of a sworn complaint alleging that a
79 lobbyist or principal has failed to register with a governmental
80 entity ~~district~~ or has knowingly submitted false information in
81 a report or registration required under this section, the
82 commission shall investigate a lobbyist or principal pursuant to
83 the procedures established under s. 112.324. The commission
84 shall provide the Governor with a report of its findings and
85 recommendations in any investigation conducted pursuant to this
86 subsection. The Governor is authorized to enforce the
87 commission's findings and recommendations.

88 (8) A governmental entity ~~Water management districts~~ may
89 adopt rules to establish procedures to govern the registration
90 of lobbyists, including the adoption of forms and the
91 establishment of a lobbyist registration fee.

92 Section 7. Paragraph (c) of subsection (3) of section
93 129.03, Florida Statutes, is amended to read:

94 129.03 Preparation and adoption of budget.-

95 (3) The county budget officer, after tentatively
96 ascertaining the proposed fiscal policies of the board for the
97 next fiscal year, shall prepare and present to the board a
98 tentative budget for the next fiscal year for each of the funds



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99 provided in this chapter, including all estimated receipts,
100 taxes to be levied, and balances expected to be brought forward
101 and all estimated expenditures, reserves, and balances to be
102 carried over at the end of the year.

103 (c) The board shall hold public hearings to adopt tentative
104 and final budgets pursuant to s. 200.065. The hearings shall be
105 primarily for the purpose of hearing requests and complaints
106 from the public regarding the budgets and the proposed tax
107 levies and for explaining the budget and any proposed or adopted
108 amendments. The tentative budget must be posted on the county's
109 official website at least 2 days before the public hearing to
110 consider such budget and must remain on the website for at least
111 45 days. The final budget must be posted on the website within
112 30 days after adoption and must remain on the website for at
113 least 2 years. The tentative budgets, adopted tentative budgets,
114 and final budgets shall be filed in the office of the county
115 auditor as a public record. Sufficient reference in words and
116 figures to identify the particular transactions shall be made in
117 the minutes of the board to record its actions with reference to
118 the budgets.

119 Section 8. Paragraph (f) of subsection (2) of section
120 129.06, Florida Statutes, is amended to read:

121 129.06 Execution and amendment of budget.—

122 (2) The board at any time within a fiscal year may amend a
123 budget for that year, and may within the first 60 days of a
124 fiscal year amend the budget for the prior fiscal year, as
125 follows:

126 (f) Unless otherwise prohibited by law, if an amendment to
127 a budget is required for a purpose not specifically authorized



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128 in paragraphs (a)-(e), the amendment may be authorized by
129 resolution or ordinance of the board of county commissioners
130 adopted following a public hearing.

131 1. The public hearing must be advertised at least 2 days,
132 but not more than 5 days, before the date of the hearing. The
133 advertisement must appear in a newspaper of paid general
134 circulation and must identify the name of the taxing authority,
135 the date, place, and time of the hearing, and the purpose of the
136 hearing. The advertisement must also identify each budgetary
137 fund to be amended, the source of the funds, the use of the
138 funds, and the total amount of each fund's appropriations.

139 2. If the board amends the budget pursuant to this
140 paragraph, the adopted amendment must be posted on the county's
141 official website within 5 days after adoption and must remain on
142 the website for at least 2 years.

143 Section 9. Subsections (3) and (5) of section 166.241,
144 Florida Statutes, are amended to read:

145 166.241 Fiscal years, budgets, and budget amendments.—

146 (3) The tentative budget must be posted on the
147 municipality's official website at least 2 days before the
148 budget hearing, held pursuant to s. 200.065 or other law, to
149 consider such budget, and must remain on the website for at
150 least 45 days. The final adopted budget must be posted on the
151 municipality's official website within 30 days after adoption
152 and must remain on the website for at least 2 years. If the
153 municipality does not operate an official website, the
154 municipality must, within a reasonable period of time as
155 established by the county or counties in which the municipality
156 is located, transmit the tentative budget and final budget to



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157 the manager or administrator of such county or counties who
158 shall post the budgets on the county's website.

159 (5) If the governing body of a municipality amends the
160 budget pursuant to paragraph (4)(c), the adopted amendment must
161 be posted on the official website of the municipality within 5
162 days after adoption and must remain on the website for at least
163 2 years. If the municipality does not operate an official
164 website, the municipality must, within a reasonable period of
165 time as established by the county or counties in which the
166 municipality is located, transmit the adopted amendment to the
167 manager or administrator of such county or counties who shall
168 post the adopted amendment on the county's website.

169 Section 10. Subsections (4) and (7) of section 189.016,
170 Florida Statutes, are amended to read:

171 189.016 Reports; budgets; audits.—

172 (4) The tentative budget must be posted on the special
173 district's official website at least 2 days before the budget
174 hearing, held pursuant to s. 200.065 or other law, to consider
175 such budget, and must remain on the website for at least 45
176 days. The final adopted budget must be posted on the special
177 district's official website within 30 days after adoption and
178 must remain on the website for at least 2 years. If the special
179 district does not operate an official website, the special
180 district must, within a reasonable period of time as established
181 by the local general-purpose government or governments in which
182 the special district is located or the local governing authority
183 to which the district is dependent, transmit the tentative
184 budget or final budget to the manager or administrator of the
185 local general-purpose government or the local governing



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186 authority. The manager or administrator shall post the tentative
187 budget or final budget on the website of the local general-
188 purpose government or governing authority. This subsection and
189 subsection (3) do not apply to water management districts as
190 defined in s. 373.019.

191 (7) If the governing body of a special district amends the
192 budget pursuant to paragraph (6) (c), the adopted amendment must
193 be posted on the official website of the special district within
194 5 days after adoption and must remain on the website for at
195 least 2 years. If the special district does not operate an
196 official website, the special district must, within a reasonable
197 period of time as established by the local general-purpose
198 government or governments in which the special district is
199 located or the local governing authority to which the district
200 is dependent, transmit the adopted amendment to the manager or
201 administrator of the local general-purpose government or
202 governing authority. The manager or administrator shall post the
203 adopted amendment on the website of the local general-purpose
204 government or governing authority.

205 Section 11. Present subsections (1) through (5) of section
206 215.425, Florida Statutes, are redesignated as subsections (2)
207 through (6), respectively, present subsection (2) and paragraph
208 (a) of present subsection (4) of that section are amended, and a
209 new subsection (1) and subsections (7) through (12) are added to
210 that section, to read:

211 215.425 Extra compensation claims prohibited; bonuses;
212 severance pay.—

213 (1) As used in this section, the term "public funds" means
214 any taxes, tuition, grants, fines, fees, or other charges or any



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215 other type of revenue collected by the state or any county,
216 municipality, special district, school district, Florida College
217 System institution, state university, or other separate unit of
218 government created pursuant to law, including any office,
219 department, agency, division, subdivision, political
220 subdivision, board, bureau, commission, authority, or
221 institution of such entities. The term does not include funds
222 contributed or paid to an affiliated direct-support organization
223 or citizen support organization by a private person or entity in
224 good faith and in the ordinary course of such organization's
225 business.

226
227 ===== T I T L E A M E N D M E N T =====

228 And the title is amended as follows:

229 Delete lines 30 - 36

230 and insert:

231 interests to include school districts; amending s.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Rules (Joyner) recommended the following:

1 **Senate Substitute for Amendment (381578) (with title**
2 **amendment)**

3
4 Delete lines 408 - 744

5 and insert:

6 Section 6. Section 112.3261, Florida Statutes, is amended
7 to read:

8 112.3261 Lobbying before governmental entities ~~water~~
9 ~~management districts~~; registration and reporting.—

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

11 (a) "Governmental entity" or "entity" ~~"District"~~ means a



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12 water management district created in s. 373.069 and operating
13 under the authority of chapter 373, a hospital district, a
14 children's services district, an expressway authority as the
15 term "authority" is defined in s. 348.0002, the term "port
16 authority" as defined in s. 315.02, a county or municipality
17 that has not adopted lobbyist registration and reporting
18 requirements, or an independent special district with annual
19 revenues of more than \$5 million which exercises ad valorem
20 taxing authority.

21 (b) "Lobbies" means seeking, on behalf of another person,
22 to influence a governmental entity ~~district~~ with respect to a
23 decision of the entity ~~district~~ in an area of policy or
24 procurement or an attempt to obtain the goodwill of an a
25 ~~district~~ official or employee of a governmental entity. The term
26 "lobbies" shall be interpreted and applied consistently with the
27 rules of the commission implementing s. 112.3215.

28 (c) "Lobbyist" has the same meaning as provided in s.
29 112.3215.

30 (d) "Principal" has the same meaning as provided in s.
31 112.3215.

32 (2) A person may not lobby a governmental entity ~~district~~
33 until such person has registered as a lobbyist with that entity
34 ~~district~~. Such registration shall be due upon initially being
35 retained to lobby and is renewable on a calendar-year basis
36 thereafter. Upon registration, the person shall provide a
37 statement signed by the principal or principal's representative
38 stating that the registrant is authorized to represent the
39 principal. The principal shall also identify and designate its
40 main business on the statement authorizing that lobbyist



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41 pursuant to a classification system approved by the governmental
42 entity district. Any changes to the information required by this
43 section must be disclosed within 15 days by filing a new
44 registration form. The registration form shall require each
45 lobbyist to disclose, under oath, the following:

46 (a) The lobbyist's name and business address.

47 (b) The name and business address of each principal
48 represented.

49 (c) The existence of any direct or indirect business
50 association, partnership, or financial relationship with an
51 official ~~any officer~~ or employee of a governmental entity
52 ~~district~~ with which he or she lobbies or intends to lobby.

53 (d) A governmental entity shall create a lobbyist
54 registration form modeled after the ~~In lieu of creating its own~~
55 ~~lobbyist registration forms, a district may accept a completed~~
56 legislative branch or executive branch lobbyist registration
57 form, which must be returned to the governmental entity.

58 (3) A governmental entity district shall make lobbyist
59 registrations available to the public. If a governmental entity
60 ~~district~~ maintains a website, a database of currently registered
61 lobbyists and principals must be available on the entity's
62 ~~district's~~ website.

63 (4) A lobbyist shall promptly send a written statement to
64 the governmental entity district canceling the registration for
65 a principal upon termination of the lobbyist's representation of
66 that principal. A governmental entity district may remove the
67 name of a lobbyist from the list of registered lobbyists if the
68 principal notifies the entity district that a person is no
69 longer authorized to represent that principal.



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70 (5) A governmental entity ~~district~~ may establish an annual
71 lobbyist registration fee, not to exceed \$40, for each principal
72 represented. The governmental entity ~~district~~ may use
73 registration fees only to administer this section.

74 (6) A governmental entity ~~district~~ shall be diligent to
75 ascertain whether persons required to register pursuant to this
76 section have complied. A governmental entity ~~district~~ may not
77 knowingly authorize a person who is not registered pursuant to
78 this section to lobby the entity ~~district~~.

79 (7) Upon receipt of a sworn complaint alleging that a
80 lobbyist or principal has failed to register with a governmental
81 entity ~~district~~ or has knowingly submitted false information in
82 a report or registration required under this section, the
83 commission shall investigate a lobbyist or principal pursuant to
84 the procedures established under s. 112.324. The commission
85 shall provide the Governor with a report of its findings and
86 recommendations in any investigation conducted pursuant to this
87 subsection. The Governor is authorized to enforce the
88 commission's findings and recommendations.

89 (8) A governmental entity ~~Water management districts~~ may
90 adopt rules to establish procedures to govern the registration
91 of lobbyists, including the adoption of forms and the
92 establishment of a lobbyist registration fee.

93 Section 7. Paragraph (c) of subsection (3) of section
94 129.03, Florida Statutes, is amended to read:

95 129.03 Preparation and adoption of budget.—

96 (3) The county budget officer, after tentatively
97 ascertaining the proposed fiscal policies of the board for the
98 next fiscal year, shall prepare and present to the board a



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99 tentative budget for the next fiscal year for each of the funds
100 provided in this chapter, including all estimated receipts,
101 taxes to be levied, and balances expected to be brought forward
102 and all estimated expenditures, reserves, and balances to be
103 carried over at the end of the year.

104 (c) The board shall hold public hearings to adopt tentative
105 and final budgets pursuant to s. 200.065. The hearings shall be
106 primarily for the purpose of hearing requests and complaints
107 from the public regarding the budgets and the proposed tax
108 levies and for explaining the budget and any proposed or adopted
109 amendments. The tentative budget must be posted on the county's
110 official website at least 2 days before the public hearing to
111 consider such budget and must remain on the website for at least
112 45 days. The final budget must be posted on the website within
113 30 days after adoption and must remain on the website for at
114 least 2 years. The tentative budgets, adopted tentative budgets,
115 and final budgets shall be filed in the office of the county
116 auditor as a public record. Sufficient reference in words and
117 figures to identify the particular transactions shall be made in
118 the minutes of the board to record its actions with reference to
119 the budgets.

120 Section 8. Paragraph (f) of subsection (2) of section
121 129.06, Florida Statutes, is amended to read:

122 129.06 Execution and amendment of budget.—

123 (2) The board at any time within a fiscal year may amend a
124 budget for that year, and may within the first 60 days of a
125 fiscal year amend the budget for the prior fiscal year, as
126 follows:

127 (f) Unless otherwise prohibited by law, if an amendment to



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128 a budget is required for a purpose not specifically authorized
129 in paragraphs (a)-(e), the amendment may be authorized by
130 resolution or ordinance of the board of county commissioners
131 adopted following a public hearing.

132 1. The public hearing must be advertised at least 2 days,
133 but not more than 5 days, before the date of the hearing. The
134 advertisement must appear in a newspaper of paid general
135 circulation and must identify the name of the taxing authority,
136 the date, place, and time of the hearing, and the purpose of the
137 hearing. The advertisement must also identify each budgetary
138 fund to be amended, the source of the funds, the use of the
139 funds, and the total amount of each fund's appropriations.

140 2. If the board amends the budget pursuant to this
141 paragraph, the adopted amendment must be posted on the county's
142 official website within 5 days after adoption and must remain on
143 the website for at least 2 years.

144 Section 9. Subsections (3) and (5) of section 166.241,
145 Florida Statutes, are amended to read:

146 166.241 Fiscal years, budgets, and budget amendments.—

147 (3) The tentative budget must be posted on the
148 municipality's official website at least 2 days before the
149 budget hearing, held pursuant to s. 200.065 or other law, to
150 consider such budget, and must remain on the website for at
151 least 45 days. The final adopted budget must be posted on the
152 municipality's official website within 30 days after adoption
153 and must remain on the website for at least 2 years. If the
154 municipality does not operate an official website, the
155 municipality must, within a reasonable period of time as
156 established by the county or counties in which the municipality



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157 is located, transmit the tentative budget and final budget to
158 the manager or administrator of such county or counties who
159 shall post the budgets on the county's website.

160 (5) If the governing body of a municipality amends the
161 budget pursuant to paragraph (4) (c), the adopted amendment must
162 be posted on the official website of the municipality within 5
163 days after adoption and must remain on the website for at least
164 2 years. If the municipality does not operate an official
165 website, the municipality must, within a reasonable period of
166 time as established by the county or counties in which the
167 municipality is located, transmit the adopted amendment to the
168 manager or administrator of such county or counties who shall
169 post the adopted amendment on the county's website.

170 Section 10. Subsections (4) and (7) of section 189.016,
171 Florida Statutes, are amended to read:

172 189.016 Reports; budgets; audits.—

173 (4) The tentative budget must be posted on the special
174 district's official website at least 2 days before the budget
175 hearing, held pursuant to s. 200.065 or other law, to consider
176 such budget, and must remain on the website for at least 45
177 days. The final adopted budget must be posted on the special
178 district's official website within 30 days after adoption and
179 must remain on the website for at least 2 years. If the special
180 district does not operate an official website, the special
181 district must, within a reasonable period of time as established
182 by the local general-purpose government or governments in which
183 the special district is located or the local governing authority
184 to which the district is dependent, transmit the tentative
185 budget or final budget to the manager or administrator of the



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186 local general-purpose government or the local governing
187 authority. The manager or administrator shall post the tentative
188 budget or final budget on the website of the local general-
189 purpose government or governing authority. This subsection and
190 subsection (3) do not apply to water management districts as
191 defined in s. 373.019.

192 (7) If the governing body of a special district amends the
193 budget pursuant to paragraph (6)(c), the adopted amendment must
194 be posted on the official website of the special district within
195 5 days after adoption and must remain on the website for at
196 least 2 years. If the special district does not operate an
197 official website, the special district must, within a reasonable
198 period of time as established by the local general-purpose
199 government or governments in which the special district is
200 located or the local governing authority to which the district
201 is dependent, transmit the adopted amendment to the manager or
202 administrator of the local general-purpose government or
203 governing authority. The manager or administrator shall post the
204 adopted amendment on the website of the local general-purpose
205 government or governing authority.

206 Section 11. Present subsection (1) of section 215.425,
207 Florida Statutes, is redesignated as subsection (2), present
208 subsection (2) and paragraph (a) of subsection (4) are amended,
209 and a new subsection (1) and subsections (6) through (12) are
210 added to that section, to read:

211 215.425 Extra compensation claims prohibited; bonuses;
212 severance pay.—

213 (1) As used in this section, the term "public funds" means
214 any taxes, tuition, state grants, fines, fees, or other charges



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215 or any other type of revenue collected by the state or any
216 county, municipality, special district, school district, Florida
217 College System institution, state university, or other separate
218 unit of government created pursuant to law, including any
219 office, department, agency, division, subdivision, political
220 subdivision, board, bureau, or commission of such entities.

221 However, the term does not include the following:

222 (a) For state universities, revenues received by, through,
223 or from faculty practice plans, health services support
224 organizations, hospitals with which state universities are
225 affiliated, direct-support organizations, or federal, auxiliary,
226 or private sources, except for tuition;

227 (b) For public hospitals, special districts, and Florida
228 College System institutions, revenues and fees received from
229 non-state appropriated sources or other general non-tax
230 revenues; or

231 (c) A clothing and maintenance allowance given to
232 plainclothes deputies pursuant to s. 30.49.

233 ~~(2) This section does not apply to:~~

234 ~~(a) A bonus or severance pay that is paid wholly from~~
235 ~~nontax revenues and nonstate-appropriated funds, the payment and~~
236 ~~receipt of which does not otherwise violate part III of chapter~~
237 ~~112, and which is paid to an officer, agent, employee, or~~
238 ~~contractor of a public hospital that is operated by a county or~~
239 ~~a special district; or~~

240 ~~(b) A clothing and maintenance allowance given to~~
241 ~~plainclothes deputies pursuant to s. 30.49.~~

242 (4) (a) ~~On or after July 1, 2011,~~ A unit of government, on
243 or after July 1, 2011, or a state university, on or after July



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244 1, 2012, that is a party to ~~enters into~~ a contract or employment
245 agreement, or renewal or renegotiation of an existing contract
246 or employment agreement, that contains a provision for severance
247 pay with an officer, agent, employee, or contractor must include
248 the following provisions in the contract:

249 1. A requirement that severance pay paid from public funds
250 ~~provided~~ may not exceed an amount greater than 20 weeks of
251 compensation.

252 2. A prohibition of provision of severance pay paid from
253 public funds when the officer, agent, employee, or contractor
254 has been fired for misconduct, as defined in s. 443.036(29), by
255 the unit of government.

256 (6) Upon discovery or notification that a unit of
257 government has provided prohibited compensation to any officer,
258 agent, employee, or contractor in violation of this section,
259 such unit of government shall investigate and take all necessary
260 action to recover the prohibited compensation.

261 (a) If the violation was unintentional, the unit of
262 government shall recover the prohibited compensation from the
263 individual receiving the prohibited compensation through normal
264 recovery methods for overpayments.

265 (b) If the violation was willful, the unit of government
266 shall recover the prohibited compensation from either the
267 individual receiving the prohibited compensation or the
268 individual or individuals responsible for approving the
269 prohibited compensation. Each individual determined to have
270 willfully violated this section is jointly and severally liable
271 for repayment of the prohibited compensation.

272 (7) A person who willfully violates this section commits a



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273 misdemeanor of the first degree, punishable as provided in s.
274 775.082 or s. 775.083.

275 (8) An officer who exercises the powers and duties of a
276 state or county officer and willfully violates this section is
277 subject to the Governor's power under s. 7(a), Art. IV of the
278 State Constitution. An officer who exercises powers and duties
279 other than those of a state or county officer and willfully
280 violates this section is subject to the suspension and removal
281 procedures under s. 112.51.

282 (9) (a) A person who reports a violation of this section is
283 eligible for a reward of at least \$500, or the lesser of 10
284 percent of the funds recovered or \$10,000 per incident of a
285 prohibited compensation payment recovered by the unit of
286 government, depending upon the extent to which the person
287 substantially contributed to the discovery, notification, and
288 recovery of such prohibited payment.

289 (b) In the event that the recovery of the prohibited
290 compensation is based primarily on disclosures of specific
291 information, other than information provided by such person,
292 relating to allegations or transactions in a criminal, civil, or
293 administrative hearing; in a legislative, administrative,
294 inspector general, or other government report; in an auditor
295 general report, hearing, audit, or investigation; or from the
296 news media, such person is not eligible for a reward or for an
297 award of a portion of the proceeds or payment of attorney fees
298 and costs pursuant to s. 68.085.

299 (c) If it is determined that the person who reported a
300 violation of this section was involved in the authorization,
301 approval, or receipt of the prohibited compensation or is



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302 convicted of criminal conduct arising from his or her role in
303 the authorization, approval, or receipt of the prohibited
304 compensation, such person is not eligible for a reward or for an
305 award of a portion of the proceeds or payment of attorney fees
306 and costs pursuant to s. 68.085.

307 (10) An employee who is discharged, demoted, suspended,
308 threatened, harassed, or in any manner discriminated against in
309 the terms and conditions of employment by his or her employer
310 because of lawful acts done by the employee on behalf of the
311 employee or others in furtherance of an action under this
312 section, including investigation for initiation of, testimony
313 for, or assistance in an action filed or to be filed under this
314 section, has a cause of action under s. 112.3187.

315 (11) If the unit of government fails to recover prohibited
316 compensation for a willful violation of this section upon
317 discovery and notification of such prohibited payment within 90
318 days, a cause of action may be brought to:

319 (a) Recover state funds in accordance with ss. 68.082 and
320 68.083.

321 (b) Recover other funds by the Department of Legal Affairs
322 using the procedures set forth in ss. 68.082 and 68.083, except
323 that venue shall lie in the circuit court of the county in which
324 the unit of government is located.

325 (c) Recover other funds by a person using the procedures
326 set forth in ss. 68.082 and 68.083, except that venue shall lie
327 in the circuit court of the county in which the unit of
328 government is located.

329 (12) Subsections (7)-(11) apply prospectively to contracts
330 or employment agreements, or the renewal or renegotiation of an



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331 existing contract or employment agreement, effective on or after
332 July 1, 2015.

333
334 ===== T I T L E A M E N D M E N T =====

335 And the title is amended as follows:

336 Delete lines 30 - 58

337 and insert:

338 interests to include school districts; amending s.
339 112.3261, F.S.; revising terms to conform to changes
340 made by the act; expanding the types of governmental
341 entities that are subject to lobbyist registration
342 requirements; requiring a governmental entity to
343 create a lobbyist registration form; amending ss.
344 129.03, 129.06, 166.241, and 189.016, F.S.; requiring
345 counties, municipalities, and special districts to
346 maintain certain budget documents on the entities'
347 websites for a specified period; amending s. 215.425,
348 F.S.; defining the term "public funds"; requiring
349 certain contracts to which a unit of government or
350 state university is a party during a specified period
351 to contain certain prohibitions on severance pay;
352 requiring a unit of government to investigate and take
353 necessary action to recover prohibited compensation;
354 specifying methods of recovery and liability for
355 unintentional and willful violations; providing a
356 penalty; specifying applicability of procedures
357 regarding suspension and removal of an officer who
358 commits a willful violation; establishing eligibility
359 criteria and amounts for rewards; specifying



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360 | circumstances under which an employee has a cause of
361 | action under the Whistle-blower's Act; establishing
362 | causes of action if a unit of government fails to
363 | recover prohibited compensation within a certain
364 | timeframe; providing applicability;

By the Committees on Community Affairs; and Ethics and Elections; and Senator Gaetz

578-03181-15

20151372c2

1 A bill to be entitled
 2 An act relating to government accountability; amending
 3 s. 11.40, F.S.; specifying that the Governor, the
 4 Commissioner of Education, or the designee of the
 5 Governor or of the Commissioner of Education may
 6 notify the Legislative Auditing Committee of an
 7 entity's failure to comply with certain auditing and
 8 financial reporting requirements; amending s. 11.45,
 9 F.S.; defining the terms "abuse," "fraud," and
 10 "waste"; revising the definition of the term "local
 11 governmental entity"; excluding water management
 12 districts from certain audit requirements; removing a
 13 cross-reference; authorizing the Auditor General to
 14 conduct audits of tourist development councils and
 15 county tourism promotion agencies; revising reporting
 16 requirements applicable to the Auditor General;
 17 amending s. 28.35, F.S.; revising reporting
 18 requirements applicable to the Florida Clerks of Court
 19 Operations Corporation; amending s. 43.16, F.S.;
 20 revising the responsibilities of the Justice
 21 Administrative Commission, each state attorney, each
 22 public defender, a criminal conflict and civil
 23 regional counsel, a capital collateral regional
 24 counsel, and the Guardian Ad Litem Program, to include
 25 the establishment and maintenance of certain internal
 26 controls; amending s. 112.31455, F.S.; correcting a
 27 cross-reference; revising provisions governing
 28 collection methods for unpaid automatic fines for
 29 failure to timely file disclosure of financial

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30 interests to include school districts; creating s.
 31 112.31456, F.S.; authorizing the Commission on Ethics
 32 to seek wage garnishment of certain individuals to
 33 satisfy unpaid fines; authorizing the commission to
 34 refer unpaid fines to a collection agency;
 35 establishing a statute of limitations with respect to
 36 the collection of an unpaid fine; amending s.
 37 112.3261, F.S.; revising terms to conform to changes
 38 made by the act; expanding the types of governmental
 39 entities that are subject to lobbyist registration
 40 requirements; requiring a governmental entity to
 41 create a lobbyist registration form; amending ss.
 42 129.03, 129.06, 166.241, and 189.016, F.S.; requiring
 43 counties, municipalities, and special districts to
 44 maintain certain budget documents on the entities'
 45 websites for a specified period; amending s. 215.425,
 46 F.S.; defining the term "public funds"; requiring a
 47 unit of government to investigate and take necessary
 48 action to recover prohibited compensation; specifying
 49 methods of recovery and liability for unintentional
 50 and willful violations; providing a penalty;
 51 specifying applicability of procedures regarding
 52 suspension and removal of an officer who commits a
 53 willful violation; establishing eligibility criteria
 54 and amounts for rewards; specifying circumstances
 55 under which an employee has a cause of action under
 56 the Whistle-blower's Act; establishing causes of
 57 action if a unit of government fails to recover
 58 prohibited compensation within a certain timeframe;

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59 amending s. 215.86, F.S.; revising management systems
60 and controls to be employed by each state agency and
61 the judicial branch; amending s. 215.97, F.S.;
62 revising the definition of the term "audit threshold";
63 amending s. 215.985, F.S.; revising the requirements
64 for a monthly financial statement provided by a water
65 management district; amending s. 218.32, F.S.;
66 revising the requirements of the annual financial
67 audit report of a local governmental entity;
68 authorizing the Department of Financial Services to
69 request additional information from a local
70 governmental entity; requiring a local governmental
71 entity to respond to such requests within a specified
72 timeframe; requiring the department to notify the
73 Legislative Auditing Committee of noncompliance;
74 amending s. 218.33, F.S.; requiring local governmental
75 entities to establish and maintain internal controls;
76 amending s. 218.39, F.S.; requiring an audited entity
77 to respond to audit recommendations under specified
78 circumstances; amending s. 218.391, F.S.; revising the
79 composition of an audit committee; prohibiting an
80 audit committee member from being an employee, chief
81 executive officer, or chief financial officer of the
82 respective governmental entity; requiring the chair of
83 an audit committee to sign and execute an affidavit
84 affirming compliance with auditor selection
85 procedures; prescribing procedures in the event of
86 noncompliance with auditor selection procedures;
87 amending s. 288.92, F.S.; prohibiting specified

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88 officers and board members of Enterprise Florida,
89 Inc., from representing a person or entity for
90 compensation before Enterprise Florida, Inc., and
91 associated entities thereof, for a specified
92 timeframe; amending s. 288.9604, F.S.; prohibiting a
93 director of the board of directors of the Florida
94 Development Finance Corporation from representing a
95 person or entity for compensation before the
96 corporation for a specified timeframe; amending s.
97 373.536, F.S.; deleting obsolete language; requiring
98 water management districts to maintain certain budget
99 documents on the districts' websites for a specified
100 period; amending s. 1002.33, F.S.; revising the
101 responsibilities of the governing board of a charter
102 school to include the establishment and maintenance of
103 internal controls; amending s. 1002.37, F.S.;
104 requiring completion of an annual financial audit of
105 the Florida Virtual School; specifying audit
106 requirements; requiring an audit report to be
107 submitted to the board of trustees of the Florida
108 Virtual School and the Auditor General; removing
109 obsolete provisions; amending s. 1010.01, F.S.;
110 requiring each school district, Florida College System
111 institution, and state university to establish and
112 maintain certain internal controls; amending s.
113 1010.30, F.S.; requiring a district school board,
114 Florida College System institution board of trustees,
115 or university board of trustees to respond to audit
116 recommendations under certain circumstances; amending

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117 ss. 68.082, 68.083, 218.503, and 1002.455, F.S.;

118 conforming provisions and cross-references to changes

119 made by the act; declaring that the act fulfills an

120 important state interest; providing an effective date.

121

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

123

124 Section 1. Subsection (2) of section 11.40, Florida

125 Statutes, is amended to read:

126 11.40 Legislative Auditing Committee.—

127 (2) Following notification by the Auditor General, the

128 Department of Financial Services, ~~or~~ the Division of Bond

129 Finance of the State Board of Administration, the Governor or

130 his or her designee, or the Commissioner of Education or his or

131 her designee of the failure of a local governmental entity,

132 district school board, charter school, or charter technical

133 career center to comply with the applicable provisions within s.

134 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the

135 Legislative Auditing Committee may schedule a hearing to

136 determine if the entity should be subject to further state

137 action. If the committee determines that the entity should be

138 subject to further state action, the committee shall:

139 (a) In the case of a local governmental entity or district

140 school board, direct the Department of Revenue and the

141 Department of Financial Services to withhold any funds not

142 pledged for bond debt service satisfaction which are payable to

143 such entity until the entity complies with the law. The

144 committee shall specify the date such action shall begin, and

145 the directive must be received by the Department of Revenue and

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146 the Department of Financial Services 30 days before the date of

147 the distribution mandated by law. The Department of Revenue and

148 the Department of Financial Services may implement the

149 provisions of this paragraph.

150 (b) In the case of a special district created by:

151 1. A special act, notify the President of the Senate, the

152 Speaker of the House of Representatives, the standing committees

153 of the Senate and the House of Representatives charged with

154 special district oversight as determined by the presiding

155 officers of each respective chamber, the legislators who

156 represent a portion of the geographical jurisdiction of the

157 special district pursuant to s. 189.034(2), and the Department

158 of Economic Opportunity that the special district has failed to

159 comply with the law. Upon receipt of notification, the

160 Department of Economic Opportunity shall proceed pursuant to s.

161 189.062 or s. 189.067. If the special district remains in

162 noncompliance after the process set forth in s. 189.034(3), or

163 if a public hearing is not held, the Legislative Auditing

164 Committee may request the department to proceed pursuant to s.

165 189.067(3).

166 2. A local ordinance, notify the chair or equivalent of the

167 local general-purpose government pursuant to s. 189.035(2) and

168 the Department of Economic Opportunity that the special district

169 has failed to comply with the law. Upon receipt of notification,

170 the department shall proceed pursuant to s. 189.062 or s.

171 189.067. If the special district remains in noncompliance after

172 the process set forth in s. 189.034(3), or if a public hearing

173 is not held, the Legislative Auditing Committee may request the

174 department to proceed pursuant to s. 189.067(3).

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175 3. Any manner other than a special act or local ordinance,
 176 notify the Department of Economic Opportunity that the special
 177 district has failed to comply with the law. Upon receipt of
 178 notification, the department shall proceed pursuant to s.
 179 189.062 or s. 189.067(3).

180 (c) In the case of a charter school or charter technical
 181 career center, notify the appropriate sponsoring entity, which
 182 may terminate the charter pursuant to ss. 1002.33 and 1002.34.

183 Section 2. Subsection (1), paragraph (j) of subsection (2),
 184 paragraph (v) of subsection (3), and paragraph (i) of subsection
 185 (7) of section 11.45, Florida Statutes, are amended, and
 186 paragraph (y) is added to subsection (3) of that section, to
 187 read:

188 11.45 Definitions; duties; authorities; reports; rules.—

189 (1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

190 (a) “Abuse” means behavior that is deficient or improper
 191 when compared with behavior that a prudent person would consider
 192 reasonable and necessary operational practice given the facts
 193 and circumstances. The term includes the misuse of authority or
 194 position for personal gain.

195 ~~(b)(a)~~ “Audit” means a financial audit, operational audit,
 196 or performance audit.

197 ~~(c)(b)~~ “County agency” means a board of county
 198 commissioners or other legislative and governing body of a
 199 county, however styled, including that of a consolidated or
 200 metropolitan government, a clerk of the circuit court, a
 201 separate or ex officio clerk of the county court, a sheriff, a
 202 property appraiser, a tax collector, a supervisor of elections,
 203 or any other officer in whom any portion of the fiscal duties of

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204 the above are under law separately placed.

205 ~~(d)(e)~~ “Financial audit” means an examination of financial
 206 statements in order to express an opinion on the fairness with
 207 which they are presented in conformity with generally accepted
 208 accounting principles and an examination to determine whether
 209 operations are properly conducted in accordance with legal and
 210 regulatory requirements. Financial audits must be conducted in
 211 accordance with auditing standards generally accepted in the
 212 United States and government auditing standards as adopted by
 213 the Board of Accountancy. When applicable, the scope of
 214 financial audits shall encompass the additional activities
 215 necessary to establish compliance with the Single Audit Act
 216 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other
 217 applicable federal law.

218 (e) “Fraud” means obtaining something of value through
 219 willful misrepresentation, including, but not limited to, the
 220 intentional misstatements or omissions of amounts or disclosures
 221 in financial statements to deceive users of financial
 222 statements, theft of an entity’s assets, bribery, or the use of
 223 one’s position for personal enrichment through the deliberate
 224 misuse or misapplication of an organization’s resources.

225 ~~(f)(d)~~ “Governmental entity” means a state agency, a county
 226 agency, or any other entity, however styled, that independently
 227 exercises any type of state or local governmental function.

228 ~~(g)(e)~~ “Local governmental entity” means a county agency,
 229 municipality, tourist development council, county tourism
 230 promotion agency, or special district as defined in s. 189.012.
 231 ~~The term, but~~ does not include any housing authority established
 232 under chapter 421.

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233 ~~(h)(f)~~ "Management letter" means a statement of the
234 auditor's comments and recommendations.

235 ~~(i)(g)~~ "Operational audit" means an audit whose purpose is
236 to evaluate management's performance in establishing and
237 maintaining internal controls, including controls designed to
238 prevent and detect fraud, waste, and abuse, and in administering
239 assigned responsibilities in accordance with applicable laws,
240 administrative rules, contracts, grant agreements, and other
241 guidelines. Operational audits must be conducted in accordance
242 with government auditing standards. Such audits examine internal
243 controls that are designed and placed in operation to promote
244 and encourage the achievement of management's control objectives
245 in the categories of compliance, economic and efficient
246 operations, reliability of financial records and reports, and
247 safeguarding of assets, and identify weaknesses in those
248 internal controls.

249 ~~(j)(h)~~ "Performance audit" means an examination of a
250 program, activity, or function of a governmental entity,
251 conducted in accordance with applicable government auditing
252 standards or auditing and evaluation standards of other
253 appropriate authoritative bodies. The term includes an
254 examination of issues related to:

- 255 1. Economy, efficiency, or effectiveness of the program.
- 256 2. Structure or design of the program to accomplish its
257 goals and objectives.
- 258 3. Adequacy of the program to meet the needs identified by
259 the Legislature or governing body.
- 260 4. Alternative methods of providing program services or
261 products.

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262 5. Goals, objectives, and performance measures used by the
263 agency to monitor and report program accomplishments.

264 6. The accuracy or adequacy of public documents, reports,
265 or requests prepared under the program by state agencies.

266 7. Compliance of the program with appropriate policies,
267 rules, or laws.

268 8. Any other issues related to governmental entities as
269 directed by the Legislative Auditing Committee.

270 ~~(k)(i)~~ "Political subdivision" means a separate agency or
271 unit of local government created or established by law and
272 includes, but is not limited to, the following and the officers
273 thereof: authority, board, branch, bureau, city, commission,
274 consolidated government, county, department, district,
275 institution, metropolitan government, municipality, office,
276 officer, public corporation, town, or village.

277 ~~(l)(j)~~ "State agency" means a separate agency or unit of
278 state government created or established by law and includes, but
279 is not limited to, the following and the officers thereof:
280 authority, board, branch, bureau, commission, department,
281 division, institution, office, officer, or public corporation,
282 as the case may be, except any such agency or unit within the
283 legislative branch of state government other than the Florida
284 Public Service Commission.

285 (m) "Waste" means the act of using or expending resources
286 unreasonably, carelessly, extravagantly, or for no useful
287 purpose.

288 (2) DUTIES.—The Auditor General shall:

289 (j) Conduct audits of local governmental entities when
290 determined to be necessary by the Auditor General, when directed

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291 by the Legislative Auditing Committee, or when otherwise
 292 required by law. No later than 18 months after the release of
 293 the audit report, the Auditor General shall perform such
 294 appropriate followup procedures as he or she deems necessary to
 295 determine the audited entity's progress in addressing the
 296 findings and recommendations contained within the Auditor
 297 General's previous report. The Auditor General shall notify each
 298 member of the audited entity's governing body and the
 299 Legislative Auditing Committee of the results of his or her
 300 determination. For purposes of this paragraph, local
 301 governmental entities do not include water management districts.

302 The Auditor General shall perform his or her duties
 303 independently but under the general policies established by the
 304 Legislative Auditing Committee. This subsection does not limit
 305 the Auditor General's discretionary authority to conduct other
 306 audits or engagements of governmental entities as authorized in
 307 subsection (3).
 308

309 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor
 310 General may, pursuant to his or her own authority, or at the
 311 direction of the Legislative Auditing Committee, conduct audits
 312 or other engagements as determined appropriate by the Auditor
 313 General of:

314 (v) The Florida Virtual School ~~pursuant to s. 1002.37.~~

315 (y) Tourist development councils and county tourism
 316 promotion agencies.

317 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

318 (i) The Auditor General shall annually transmit by July 15,
 319 to the President of the Senate, the Speaker of the House of

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320 Representatives, and the Department of Financial Services, a
 321 list of all school districts, charter schools, charter technical
 322 career centers, Florida College System institutions, state
 323 universities, and local governmental entities ~~water management~~
 324 ~~districts~~ that have failed to comply with the transparency
 325 requirements as identified in the audit reports reviewed
 326 pursuant to paragraph (b) and those conducted pursuant to
 327 subsection (2).

328 Section 3. Paragraph (d) of subsection (2) of section
 329 28.35, Florida Statutes, is amended to read:

330 28.35 Florida Clerks of Court Operations Corporation.—

331 (2) The duties of the corporation shall include the
 332 following:

333 (d) Developing and certifying a uniform system of workload
 334 measures and applicable workload standards for court-related
 335 functions as developed by the corporation and clerk workload
 336 performance in meeting the workload performance standards. These
 337 workload measures and workload performance standards shall be
 338 designed to facilitate an objective determination of the
 339 performance of each clerk in accordance with minimum standards
 340 for fiscal management, operational efficiency, and effective
 341 collection of fines, fees, service charges, and court costs. The
 342 corporation shall develop the workload measures and workload
 343 performance standards in consultation with the Legislature. When
 344 the corporation finds a clerk has not met the workload
 345 performance standards, the corporation shall identify the nature
 346 of each deficiency and any corrective action recommended and
 347 taken by the affected clerk of the court. For quarterly periods
 348 ending on the last day of March, June, September, and December

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349 of each year, the corporation shall notify the Legislature of
 350 any clerk not meeting workload performance standards and provide
 351 a copy of any corrective action plans. Such notifications shall
 352 be submitted no later than 45 days after the end of the
 353 preceding quarterly period. As used in this subsection, the
 354 term:

355 1. "Workload measures" means the measurement of the
 356 activities and frequency of the work required for the clerk to
 357 adequately perform the court-related duties of the office as
 358 defined by the membership of the Florida Clerks of Court
 359 Operations Corporation.

360 2. "Workload performance standards" means the standards
 361 developed to measure the timeliness and effectiveness of the
 362 activities that are accomplished by the clerk in the performance
 363 of the court-related duties of the office as defined by the
 364 membership of the Florida Clerks of Court Operations
 365 Corporation.

366 Section 4. Present subsections (6) and (7) of section
 367 43.16, Florida Statutes, are redesignated as subsections (7) and
 368 (8), respectively, and a new subsection (6) is added to that
 369 section, to read:

370 43.16 Justice Administrative Commission; membership, powers
 371 and duties.—

372 (6) The commission, each state attorney, each public
 373 defender, the criminal conflict and civil regional counsel, the
 374 capital collateral regional counsel, and the Guardian Ad Litem
 375 Program shall establish and maintain internal controls designed
 376 to:

377 (a) Prevent and detect fraud, waste, and abuse.

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378 (b) Promote and encourage compliance with applicable laws,
 379 rules, contracts, grant agreements, and best practices.

380 (c) Support economical and efficient operations.

381 (d) Ensure reliability of financial records and reports.

382 (e) Safeguard assets.

383 Section 5. Subsection (1) of section 112.31455, Florida
 384 Statutes, is amended to read:

385 112.31455 Collection methods for unpaid automatic fines for
 386 failure to timely file disclosure of financial interests.—

387 (1) Before referring any unpaid fine accrued pursuant to s.
 388 112.3144(5) or s. 112.3145(7) ~~s. 112.3145(6)~~ to the Department
 389 of Financial Services, the commission shall attempt to determine
 390 whether the individual owing such a fine is a current public
 391 officer or current public employee. If so, the commission may
 392 notify the Chief Financial Officer or the governing body of the
 393 appropriate county, municipality, school district, or special
 394 district of the total amount of any fine owed to the commission
 395 by such individual.

396 (a) After receipt and verification of the notice from the
 397 commission, the Chief Financial Officer or the governing body of
 398 the county, municipality, school district, or special district
 399 shall begin withholding the lesser of 10 percent or the maximum
 400 amount allowed under federal law from any salary-related
 401 payment. The withheld payments shall be remitted to the
 402 commission until the fine is satisfied.

403 (b) The Chief Financial Officer or the governing body of
 404 the county, municipality, school district, or special district
 405 may retain an amount of each withheld payment, as provided in s.
 406 77.0305, to cover the administrative costs incurred under this

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407 section.

408 Section 6. Section 112.31456, Florida Statutes, is created
409 to read:

410 112.31456 Garnishment of wages for unpaid automatic fines
411 for failure to timely file disclosure of financial interests.—

412 (1) Before referring any unpaid fine accrued pursuant to s.
413 112.3144(5) or s. 112.3145(7) to the Department of Financial
414 Services, the commission shall attempt to determine whether the
415 individual owing such a fine is a current public officer or
416 current public employee. If the commission determines that an
417 individual who is the subject of an unpaid fine accrued pursuant
418 to s. 112.3144(5) or s. 112.3145(7) is no longer a public
419 officer or public employee or if the commission cannot determine
420 whether the individual is a current public officer or current
421 public employee, the commission may, 6 months after the order
422 becomes final, seek garnishment of any wages to satisfy the
423 amount of the fine, or any unpaid portion thereof, pursuant to
424 chapter 77. Upon recording the order imposing the fine with the
425 clerk of the circuit court, the order shall be deemed a judgment
426 for purposes of garnishment pursuant to chapter 77.

427 (2) The commission may refer unpaid fines to the
428 appropriate collection agency, as directed by the Chief
429 Financial Officer, to use any collection methods provided by
430 law. Except as expressly limited by this section, any other
431 collection method authorized by law is allowed.

432 (3) Action may be taken to collect any unpaid fine imposed
433 by ss. 112.3144 and 112.3145 within 20 years after the date the
434 final order is rendered.

435 Section 7. Section 112.3261, Florida Statutes, is amended

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436 to read:

437 112.3261 Lobbying before governmental entities ~~water~~
438 ~~management districts~~; registration and reporting.—

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

440 (a) "Governmental entity" or "entity" ~~"District"~~ means a
441 water management district created in s. 373.069 and operating
442 under the authority of chapter 373, a hospital district, a
443 children's services district, an expressway authority as the
444 term "authority" as defined in s. 348.0002, the term "port
445 authority" as defined in s. 315.02, or an independent special
446 district with annual revenues of more than \$5 million which
447 exercises ad valorem taxing authority.

448 (b) "Lobbies" means seeking, on behalf of another person,
449 to influence a governmental entity ~~district~~ with respect to a
450 decision of the entity ~~district~~ in an area of policy or
451 procurement or an attempt to obtain the goodwill of an a
452 district official or employee of a governmental entity. The term
453 ~~"lobbies"~~ shall be interpreted and applied consistently with the
454 rules of the commission implementing s. 112.3215.

455 (c) "Lobbyist" has the same meaning as provided in s.
456 112.3215.

457 (d) "Principal" has the same meaning as provided in s.
458 112.3215.

459 (2) A person may not lobby a governmental entity ~~district~~
460 until such person has registered as a lobbyist with that entity
461 ~~district~~. Such registration shall be due upon initially being
462 retained to lobby and is renewable on a calendar-year basis
463 thereafter. Upon registration, the person shall provide a
464 statement signed by the principal or principal's representative

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465 stating that the registrant is authorized to represent the
 466 principal. The principal shall also identify and designate its
 467 main business on the statement authorizing that lobbyist
 468 pursuant to a classification system approved by the governmental
 469 entity district. Any changes to the information required by this
 470 section must be disclosed within 15 days by filing a new
 471 registration form. The registration form shall require each
 472 lobbyist to disclose, under oath, the following:

473 (a) The lobbyist's name and business address.

474 (b) The name and business address of each principal
 475 represented.

476 (c) The existence of any direct or indirect business
 477 association, partnership, or financial relationship with an
 478 official ~~any officer~~ or employee of a governmental entity
 479 district with which he or she lobbies or intends to lobby.

480 (d) A governmental entity shall create a lobbyist
 481 registration form modeled after the ~~In lieu of creating its own~~
 482 ~~lobbyist registration forms, a district may accept a completed~~
 483 legislative branch or executive branch lobbyist registration
 484 form, which must be returned to the governmental entity.

485 (3) A governmental entity district shall make lobbyist
 486 registrations available to the public. If a governmental entity
 487 district maintains a website, a database of currently registered
 488 lobbyists and principals must be available on the entity's
 489 district's website.

490 (4) A lobbyist shall promptly send a written statement to
 491 the governmental entity district canceling the registration for
 492 a principal upon termination of the lobbyist's representation of
 493 that principal. A governmental entity district may remove the

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494 name of a lobbyist from the list of registered lobbyists if the
 495 principal notifies the entity district that a person is no
 496 longer authorized to represent that principal.

497 (5) A governmental entity district may establish an annual
 498 lobbyist registration fee, not to exceed \$40, for each principal
 499 represented. The governmental entity district may use
 500 registration fees only to administer this section.

501 (6) A governmental entity district shall be diligent to
 502 ascertain whether persons required to register pursuant to this
 503 section have complied. A governmental entity district may not
 504 knowingly authorize a person who is not registered pursuant to
 505 this section to lobby the entity district.

506 (7) Upon receipt of a sworn complaint alleging that a
 507 lobbyist or principal has failed to register with a governmental
 508 entity district or has knowingly submitted false information in
 509 a report or registration required under this section, the
 510 commission shall investigate a lobbyist or principal pursuant to
 511 the procedures established under s. 112.324. The commission
 512 shall provide the Governor with a report of its findings and
 513 recommendations in any investigation conducted pursuant to this
 514 subsection. The Governor is authorized to enforce the
 515 commission's findings and recommendations.

516 (8) A governmental entity ~~water management districts~~ may
 517 adopt rules to establish procedures to govern the registration
 518 of lobbyists, including the adoption of forms and the
 519 establishment of a lobbyist registration fee.

520 Section 8. Paragraph (c) of subsection (3) of section
 521 129.03, Florida Statutes, is amended to read:

522 129.03 Preparation and adoption of budget.—

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523 (3) The county budget officer, after tentatively
 524 ascertaining the proposed fiscal policies of the board for the
 525 next fiscal year, shall prepare and present to the board a
 526 tentative budget for the next fiscal year for each of the funds
 527 provided in this chapter, including all estimated receipts,
 528 taxes to be levied, and balances expected to be brought forward
 529 and all estimated expenditures, reserves, and balances to be
 530 carried over at the end of the year.

531 (c) The board shall hold public hearings to adopt tentative
 532 and final budgets pursuant to s. 200.065. The hearings shall be
 533 primarily for the purpose of hearing requests and complaints
 534 from the public regarding the budgets and the proposed tax
 535 levies and for explaining the budget and any proposed or adopted
 536 amendments. The tentative budget must be posted on the county's
 537 official website at least 2 days before the public hearing to
 538 consider such budget and must remain on the website for at least
 539 45 days. The final budget must be posted on the website within
 540 30 days after adoption and must remain on the website for at
 541 least 2 years. The tentative budgets, adopted tentative budgets,
 542 and final budgets shall be filed in the office of the county
 543 auditor as a public record. Sufficient reference in words and
 544 figures to identify the particular transactions shall be made in
 545 the minutes of the board to record its actions with reference to
 546 the budgets.

547 Section 9. Paragraph (f) of subsection (2) of section
 548 129.06, Florida Statutes, is amended to read:

549 129.06 Execution and amendment of budget.—

550 (2) The board at any time within a fiscal year may amend a
 551 budget for that year, and may within the first 60 days of a

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552 fiscal year amend the budget for the prior fiscal year, as
 553 follows:

554 (f) Unless otherwise prohibited by law, if an amendment to
 555 a budget is required for a purpose not specifically authorized
 556 in paragraphs (a)-(e), the amendment may be authorized by
 557 resolution or ordinance of the board of county commissioners
 558 adopted following a public hearing.

559 1. The public hearing must be advertised at least 2 days,
 560 but not more than 5 days, before the date of the hearing. The
 561 advertisement must appear in a newspaper of paid general
 562 circulation and must identify the name of the taxing authority,
 563 the date, place, and time of the hearing, and the purpose of the
 564 hearing. The advertisement must also identify each budgetary
 565 fund to be amended, the source of the funds, the use of the
 566 funds, and the total amount of each fund's appropriations.

567 2. If the board amends the budget pursuant to this
 568 paragraph, the adopted amendment must be posted on the county's
 569 official website within 5 days after adoption and must remain on
 570 the website for at least 2 years.

571 Section 10. Subsections (3) and (5) of section 166.241,
 572 Florida Statutes, are amended to read:

573 166.241 Fiscal years, budgets, and budget amendments.—

574 (3) The tentative budget must be posted on the
 575 municipality's official website at least 2 days before the
 576 budget hearing, held pursuant to s. 200.065 or other law, to
 577 consider such budget, and must remain on the website for at
 578 least 45 days. The final adopted budget must be posted on the
 579 municipality's official website within 30 days after adoption
 580 and must remain on the website for at least 2 years. If the

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581 municipality does not operate an official website, the
 582 municipality must, within a reasonable period of time as
 583 established by the county or counties in which the municipality
 584 is located, transmit the tentative budget and final budget to
 585 the manager or administrator of such county or counties who
 586 shall post the budgets on the county's website.

587 (5) If the governing body of a municipality amends the
 588 budget pursuant to paragraph (4)(c), the adopted amendment must
 589 be posted on the official website of the municipality within 5
 590 days after adoption and must remain on the website for at least
 591 2 years. If the municipality does not operate an official
 592 website, the municipality must, within a reasonable period of
 593 time as established by the county or counties in which the
 594 municipality is located, transmit the adopted amendment to the
 595 manager or administrator of such county or counties who shall
 596 post the adopted amendment on the county's website.

597 Section 11. Subsections (4) and (7) of section 189.016,
 598 Florida Statutes, are amended to read:

599 189.016 Reports; budgets; audits.—

600 (4) The tentative budget must be posted on the special
 601 district's official website at least 2 days before the budget
 602 hearing, held pursuant to s. 200.065 or other law, to consider
 603 such budget, and must remain on the website for at least 45
 604 days. The final adopted budget must be posted on the special
 605 district's official website within 30 days after adoption and
 606 must remain on the website for at least 2 years. If the special
 607 district does not operate an official website, the special
 608 district must, within a reasonable period of time as established
 609 by the local general-purpose government or governments in which

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610 the special district is located or the local governing authority
 611 to which the district is dependent, transmit the tentative
 612 budget or final budget to the manager or administrator of the
 613 local general-purpose government or the local governing
 614 authority. The manager or administrator shall post the tentative
 615 budget or final budget on the website of the local general-
 616 purpose government or governing authority. This subsection and
 617 subsection (3) do not apply to water management districts as
 618 defined in s. 373.019.

619 (7) If the governing body of a special district amends the
 620 budget pursuant to paragraph (6)(c), the adopted amendment must
 621 be posted on the official website of the special district within
 622 5 days after adoption and must remain on the website for at
 623 least 2 years. If the special district does not operate an
 624 official website, the special district must, within a reasonable
 625 period of time as established by the local general-purpose
 626 government or governments in which the special district is
 627 located or the local governing authority to which the district
 628 is dependent, transmit the adopted amendment to the manager or
 629 administrator of the local general-purpose government or
 630 governing authority. The manager or administrator shall post the
 631 adopted amendment on the website of the local general-purpose
 632 government or governing authority.

633 Section 12. Present subsections (1) through (5) of section
 634 215.425, Florida Statutes, are redesignated as subsections (2)
 635 through (6), respectively, present subsection (2) and paragraph
 636 (a) of present subsection (4) of that section are amended, and a
 637 new subsection (1) and subsections (7) through (12) are added to
 638 that section, to read:

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639 215.425 Extra compensation claims prohibited; bonuses;
 640 severance pay.-

641 (1) As used in this section, the term "public funds" means
 642 any taxes, tuition, grants, fines, fees, or other charges or any
 643 other type of revenue collected by the state or any county,
 644 municipality, special district, school district, Florida College
 645 System institution, state university, or other separate unit of
 646 government created pursuant to law, including any office,
 647 department, agency, division, subdivision, political
 648 subdivision, board, bureau, commission, authority, or
 649 institution of such entities.

650 (3)(2) This section does not apply to:

651 (a) a bonus or severance pay that is paid from sources
 652 other than public funds wholly from nontax revenues and
 653 nonstate-appropriated funds, the payment and receipt of which
 654 does not otherwise violate part III of chapter 112, and which is
 655 paid to an officer, agent, employee, or contractor of a public
 656 hospital that is operated by a county or a special district; or

657 (b) a clothing and maintenance allowance given to
 658 plainclothes deputies pursuant to s. 30.49.

659 (5) (a) (4) (a) On or after July 1, 2011, A unit of government
 660 that enters into a contract or employment agreement, or renewal
 661 or renegotiation of an existing contract or employment
 662 agreement, that contains a provision for severance pay with an
 663 officer, agent, employee, or contractor must include the
 664 following provisions in the contract:

665 1. A requirement that severance pay paid from public funds
 666 provided may not exceed an amount greater than 20 weeks of
 667 compensation.

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668 2. A prohibition of provision of severance pay paid from
 669 public funds when the officer, agent, employee, or contractor
 670 has been fired for misconduct, as defined in s. 443.036(29), by
 671 the unit of government.

672 (7) Upon discovery or notification that a unit of
 673 government has provided prohibited compensation to any officer,
 674 agent, employee, or contractor in violation of this section,
 675 such unit of government shall investigate and take all necessary
 676 action to recover the prohibited compensation.

677 (a) If the violation was unintentional, the unit of
 678 government shall recover the prohibited compensation from the
 679 individual receiving the prohibited compensation through normal
 680 recovery methods for overpayments.

681 (b) If the violation was willful, the unit of government
 682 shall recover the prohibited compensation from either the
 683 individual receiving the prohibited compensation or the
 684 individual or individuals responsible for approving the
 685 prohibited compensation. Each individual determined to have
 686 willfully violated this section is jointly and severally liable
 687 for repayment of the prohibited compensation.

688 (8) A person who willfully violates this section commits a
 689 misdemeanor of the first degree, punishable as provided in s.
 690 775.082 or s. 775.083.

691 (9) An officer who exercises the powers and duties of a
 692 state or county officer and willfully violates this section is
 693 subject to the Governor's power under s. 7(a), Art. IV of the
 694 State Constitution. An officer who exercises powers and duties
 695 other than those of a state or county officer and willfully
 696 violates this section is subject to the suspension and removal

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697 procedures under s. 112.51.

698 (10) (a) A person who reports a violation of this section is
 699 eligible for a reward of at least \$500, or the lesser of 10
 700 percent of the funds recovered or \$10,000 per incident of a
 701 prohibited compensation payment recovered by the unit of
 702 government, depending upon the extent to which the person
 703 substantially contributed to the discovery, notification, and
 704 recovery of such prohibited payment.

705 (b) In the event that the recovery of the prohibited
 706 compensation is based primarily on disclosures of specific
 707 information, other than information provided by such person,
 708 relating to allegations or transactions in a criminal, civil, or
 709 administrative hearing; in a legislative, administrative,
 710 inspector general, or other government report; in an auditor
 711 general report, hearing, audit, or investigation; or from the
 712 news media, such person is not eligible for a reward, or for an
 713 award of a portion of the proceeds or payment of attorney fees
 714 and costs pursuant to s. 68.085.

715 (c) If it is determined that the person who reported a
 716 violation of this section was involved in the authorization,
 717 approval, or receipt of the prohibited compensation or is
 718 convicted of criminal conduct arising from his or her role in
 719 the authorization, approval, or receipt of the prohibited
 720 compensation, such person is not eligible for a reward, or for
 721 an award of a portion of the proceeds or payment of attorney
 722 fees and costs pursuant to s. 68.085.

723 (11) An employee who is discharged, demoted, suspended,
 724 threatened, harassed, or in any manner discriminated against in
 725 the terms and conditions of employment by his or her employer

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726 because of lawful acts done by the employee on behalf of the
 727 employee or others in furtherance of an action under this
 728 section, including investigation for initiation of, testimony
 729 for, or assistance in an action filed or to be filed under this
 730 section, has a cause of action under s. 112.3187.

731 (12) If the unit of government fails to recover prohibited
 732 compensation for a willful violation of this section upon
 733 discovery and notification of such prohibited payment within 90
 734 days, a cause of action may be brought to:

735 (a) Recover state funds in accordance with ss. 68.082 and
 736 68.083.

737 (b) Recover other funds by the Department of Legal Affairs
 738 using the procedures set forth in ss. 68.082 and 68.083, except
 739 that venue shall lie in the circuit court of the county in which
 740 the unit of government is located.

741 (c) Recover other funds by a person using the procedures
 742 set forth in ss. 68.082 and 68.083, except that venue shall lie
 743 in the circuit court of the county in which the unit of
 744 government is located.

745 Section 13. Section 215.86, Florida Statutes, is amended to
 746 read:

747 215.86 Management systems and controls.—Each state agency
 748 and the judicial branch as defined in s. 216.011 shall establish
 749 and maintain management systems and internal controls designed
 750 to:

751 (1) Prevent and detect fraud, waste, and abuse. ~~that~~

752 (2) Promote and encourage compliance with applicable laws,
 753 rules, contracts, grant agreements, and best practices.†

754 (3) Support economical and ~~economic,~~ efficient, and

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755 ~~effective operations.~~756 (4) Ensure reliability of financial records and reports.757 ~~(5) Safeguard and safeguarding of assets. Accounting~~
758 ~~systems and procedures shall be designed to fulfill the~~
759 ~~requirements of generally accepted accounting principles.~~760 Section 14. Paragraph (a) of subsection (2) of section
761 215.97, Florida Statutes, is amended to read:

762 215.97 Florida Single Audit Act.—

763 (2) Definitions; as used in this section, the term:

764 (a) "Audit threshold" means the threshold amount used to
765 determine when a state single audit or project-specific audit of
766 a nonstate entity shall be conducted in accordance with this
767 section. Each nonstate entity that expends a total amount of
768 state financial assistance equal to or in excess of \$750,000
769 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
770 required to have a state single audit, or a project-specific
771 audit, for such fiscal year in accordance with the requirements
772 of this section. Periodically, Every 2 years the Auditor
773 General, after consulting with the Executive Office of the
774 Governor, the Department of Financial Services, and all state
775 awarding agencies, shall review the threshold amount for
776 requiring audits under this section and, if appropriate, may
777 recommend to the Legislature a statutory change to revise the
778 threshold amount in the annual report submitted pursuant to s.
779 11.45(7)(h) may adjust such threshold amount consistent with the
780 ~~purposes of this section.~~781 Section 15. Subsection (11) of section 215.985, Florida
782 Statutes, is amended to read:

783 215.985 Transparency in government spending.—

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784 (11) Each water management district shall provide a monthly
785 financial statement in the form and manner prescribed by the
786 Department of Financial Services to the district's ~~its~~ governing
787 board and make such monthly financial statement available for
788 public access on its website.789 Section 16. Paragraph (d) of subsection (1) and subsection
790 (2) of section 218.32, Florida Statutes, are amended to read:791 218.32 Annual financial reports; local governmental
792 entities.—

793 (1)

794 (d) Each local governmental entity that is required to
795 provide for an audit under s. 218.39(1) must submit a copy of
796 the audit report and annual financial report to the department
797 within 45 days after the completion of the audit report but no
798 later than 9 months after the end of the fiscal year. An
799 independent certified public accountant completing an audit of a
800 local governmental entity pursuant to s. 218.39 shall report, as
801 part of the audit, as to whether the entity's annual financial
802 report is in agreement with the audited financial statements.
803 The accountant's audit report must be supported by the same
804 level of detail as required for the annual financial report. If
805 the accountant's audit report is not in agreement with the
806 annual financial report, the accountant shall specify and
807 explain the significant differences that exist between the
808 annual financial report and the audit report.809 (2) The department shall annually by December 1 file a
810 verified report with the Governor, the Legislature, the Auditor
811 General, and the Special District Accountability Program of the
812 Department of Economic Opportunity showing the revenues, both

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813 locally derived and derived from intergovernmental transfers,
 814 and the expenditures of each local governmental entity, regional
 815 planning council, local government finance commission, and
 816 municipal power corporation that is required to submit an annual
 817 financial report. In preparing the verified report, the
 818 department may request additional information from the local
 819 governmental entity. The information requested must be provided
 820 to the department within 45 days of the request. If the local
 821 governmental entity does not comply with the request, the
 822 department shall notify the Legislative Auditing Committee,
 823 which may take action pursuant to s. 11.40(2). The report must
 824 include, but is not limited to:

- 825 (a) The total revenues and expenditures of each local
 826 governmental entity that is a component unit included in the
 827 annual financial report of the reporting entity.
 828 (b) The amount of outstanding long-term debt by each local
 829 governmental entity. For purposes of this paragraph, the term
 830 "long-term debt" means any agreement or series of agreements to
 831 pay money, which, at inception, contemplate terms of payment
 832 exceeding 1 year in duration.

833 Section 17. Present subsection (3) of section 218.33,
 834 Florida Statutes, is redesignated as subsection (4), and a new
 835 subsection (3) is added to that section, to read:

836 218.33 Local governmental entities; establishment of
 837 uniform fiscal years and accounting practices and procedures.—

838 (3) Each local governmental entity shall establish and
 839 maintain internal controls designed to:

- 840 (a) Prevent and detect fraud, waste, and abuse.
 841 (b) Promote and encourage compliance with applicable laws,

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842 rules, contracts, grant agreements, and best practices.

843 (c) Support economical and efficient operations.

844 (d) Ensure reliability of financial records and reports.

845 (e) Safeguard assets.

846 Section 18. Present subsections (8) through (12) of section
 847 218.39, Florida Statutes, are redesignated as subsections (9)
 848 through (13), respectively, and a new subsection (8) is added to
 849 that section, to read:

850 218.39 Annual financial audit reports.—

851 (8) If the audit report includes a recommendation that was
 852 previously included in the preceding financial audit report, the
 853 governing body of the audited entity, within 60 days after the
 854 delivery of the audit report to the governing body and during a
 855 regularly scheduled public meeting, shall indicate its intent
 856 regarding corrective action, the corrective action to be taken,
 857 and when the corrective action will occur. If the governing body
 858 does not intend to take corrective action, it shall explain why
 859 such action will not be taken at the regularly scheduled public
 860 meeting.

861 Section 19. Subsection (2) of section 218.391, Florida
 862 Statutes, is amended, and subsection (9) is added to that
 863 section, to read:

864 218.391 Auditor selection procedures.—

865 (2) The governing body of a ~~charter~~ county, municipality,
 866 special district, district school board, charter school, or
 867 charter technical career center shall establish an audit
 868 committee.

869 (a) For a county, the ~~Each noncharter county shall~~
 870 establish an audit committee that, at a minimum, shall consist

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871 of each of the county officers elected pursuant to the county
 872 charter or s. 1(d), Art. VIII of the State Constitution, or a
 873 designee, and one member of the board of county commissioners or
 874 its designee.

875 (b) For a municipality, special district, district school
 876 board, charter school, or charter technical career center, the
 877 audit committee shall consist of at least three members. One
 878 member of the audit committee must be a member of the governing
 879 body of an entity specified in this paragraph who shall also
 880 serve as the chair of the committee.

881 (c) A member of the audit committee may not be an employee,
 882 chief executive officer, or chief financial officer of the
 883 county, municipality, special district, district school board,
 884 charter school, or charter technical career center.

885 (d) The primary purpose of the audit committee is to assist
 886 the governing body in selecting an auditor to conduct the annual
 887 financial audit required in s. 218.39; however, the audit
 888 committee may serve other audit oversight purposes as determined
 889 by the entity's governing body. The public ~~may shall~~ not be
 890 excluded from the proceedings under this section.

891 (9) An audit report submitted pursuant to s. 218.39 must
 892 include an affidavit executed by the chair of the audit
 893 committee affirming that the committee complied with the
 894 requirements of subsections (3)-(6) in selecting an auditor. If
 895 the Auditor General determines that an entity failed to comply
 896 with the requirements of subsections (3)-(6) in selecting an
 897 auditor, the entity shall select a replacement auditor in
 898 accordance with this section to conduct audits for subsequent
 899 fiscal years if the original audit was performed under a

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900 multiyear contract. If the replacement of an auditor would
 901 preclude the entity from timely completing the annual financial
 902 audit required by s. 218.39, the entity shall replace an auditor
 903 in accordance with this section for the subsequent annual
 904 financial audit. A multiyear contract between an entity or an
 905 auditor may not prohibit or restrict an entity from complying
 906 with this subsection.

907 Section 20. Paragraph (b) of subsection (2) of section
 908 288.92, Florida Statutes, is amended to read:

909 288.92 Divisions of Enterprise Florida, Inc.-
 910 (2)

911 (b)1. The following officers and board members are subject
 912 to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 913 112.3143(2):

914 a. Officers and members of the board of directors of the
 915 divisions of Enterprise Florida, Inc.

916 b. Officers and members of the board of directors of
 917 subsidiaries of Enterprise Florida, Inc.

918 c. Officers and members of the board of directors of
 919 corporations created to carry out the missions of Enterprise
 920 Florida, Inc.

921 d. Officers and members of the board of directors of
 922 corporations with which a division is required by law to
 923 contract to carry out its missions.

924 2. The officers and board members specified in subparagraph
 925 1. may not represent another person or entity for compensation
 926 before Enterprise Florida, Inc., or a division, subsidiary, or
 927 the board of directors of corporations created to carry out the
 928 missions of Enterprise Florida, Inc., or with which a division

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929 is required by law to contract to carry out its missions, for a
 930 period of 2 years after retirement from or termination of
 931 service to a division.

932 ~~3.2.~~ For purposes of applying ss. 112.313(1)-(8), (10),
 933 (12), and (15); 112.3135; and 112.3143(2) to activities of the
 934 officers and members of the board of directors specified in
 935 subparagraph 1., those persons shall be considered public
 936 officers or employees and the corporation shall be considered
 937 their agency.

938 ~~4.3.~~ It is not a violation of s. 112.3143(2) or (4) for the
 939 officers or members of the board of directors of the Florida
 940 Tourism Industry Marketing Corporation to:

941 a. Vote on the 4-year marketing plan required under s.
 942 288.923 or vote on any individual component of or amendment to
 943 the plan.

944 b. Participate in the establishment or calculation of
 945 payments related to the private match requirements of s.
 946 288.904(3). The officer or member must file an annual disclosure
 947 describing the nature of his or her interests or the interests
 948 of his or her principals, including corporate parents and
 949 subsidiaries of his or her principal, in the private match
 950 requirements. This annual disclosure requirement satisfies the
 951 disclosure requirement of s. 112.3143(4). This disclosure must
 952 be placed either on the Florida Tourism Industry Marketing
 953 Corporation's website or included in the minutes of each meeting
 954 of the Florida Tourism Industry Marketing Corporation's board of
 955 directors at which the private match requirements are discussed
 956 or voted upon.

957 Section 21. Paragraph (a) of subsection (3) of section

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958 288.9604, Florida Statutes, is amended to read:

959 288.9604 Creation of the authority.—

960 (3)(a)1. A director may not receive compensation for his or
 961 her services, but is entitled to necessary expenses, including
 962 travel expenses, incurred in the discharge of his or her duties.
 963 Each director shall hold office until his or her successor has
 964 been appointed.

965 2. Directors are subject to ss. 112.313(1)-(8), (10), (12),
 966 and (15); 112.3135; and 112.3143(2). For purposes of applying
 967 ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 968 112.3143(2) to activities of directors, directors shall be
 969 considered public officers and the corporation shall be
 970 considered their agency.

971 3. A director of the board of directors of the corporation
 972 may not represent another person or entity for compensation
 973 before the corporation for a period of 2 years following his or
 974 her service on the board of directors.

975 Section 22. Paragraph (e) of subsection (4), paragraph (d)
 976 of subsection (5), and paragraph (d) of subsection (6) of
 977 section 373.536, Florida Statutes, are amended to read:

978 373.536 District budget and hearing thereon.—

979 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

980 (e) ~~By September 1, 2012,~~ Each district shall provide a
 981 monthly financial statement in the form and manner prescribed by
 982 the Department of Financial Services to the district's governing
 983 board and make such monthly financial statement available for
 984 public access on its website.

985 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND
 986 APPROVAL.—

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987 (d) Each district shall, by August 1 of each year, submit
 988 for review a tentative budget and a description of any
 989 significant changes from the preliminary budget submitted to the
 990 Legislature pursuant to s. 373.535 to the Governor, the
 991 President of the Senate, the Speaker of the House of
 992 Representatives, the chairs of all legislative committees and
 993 subcommittees having substantive or fiscal jurisdiction over
 994 water management districts, as determined by the President of
 995 the Senate or the Speaker of the House of Representatives, as
 996 applicable, the secretary of the department, and the governing
 997 body of each county in which the district has jurisdiction or
 998 derives any funds for the operations of the district. The
 999 tentative budget must be posted on the district's official
 1000 website at least 2 days before budget hearings held pursuant to
 1001 s. 200.065 or other law and must remain on the website for at
 1002 least 45 days.

1003 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;
 1004 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

1005 (d) The final adopted budget must be posted on the water
 1006 management district's official website within 30 days after
 1007 adoption and must remain on the website for at least 2 years.

1008 Section 23. Paragraph (j) of subsection (9) of section
 1009 1002.33, Florida Statutes, is amended to read:

1010 1002.33 Charter schools.—

1011 (9) CHARTER SCHOOL REQUIREMENTS.—

1012 (j) The governing body of the charter school shall be
 1013 responsible for:

1014 1. Establishing and maintaining internal controls designed
 1015 to:

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1016 a. Prevent and detect fraud, waste, and abuse.
 1017 b. Promote and encourage compliance with applicable laws,
 1018 rules, contracts, grant agreements, and best practices.
 1019 c. Support economical and efficient operations.
 1020 d. Ensure reliability of financial records and reports.
 1021 e. Safeguard assets.
 1022 ~~2.1-~~ Ensuring that the charter school has retained the
 1023 services of a certified public accountant or auditor for the
 1024 annual financial audit, pursuant to s. 1002.345(2), who shall
 1025 submit the report to the governing body.
 1026 ~~3.2-~~ Reviewing and approving the audit report, including
 1027 audit findings and recommendations for the financial recovery
 1028 plan.
 1029 ~~4.a.3-a-~~ Performing the duties in s. 1002.345, including
 1030 monitoring a corrective action plan.
 1031 b. Monitoring a financial recovery plan in order to ensure
 1032 compliance.
 1033 ~~5.4-~~ Participating in governance training approved by the
 1034 department which must include government in the sunshine,
 1035 conflicts of interest, ethics, and financial responsibility.
 1036 Section 24. Present subsections (6) through (10) of section
 1037 1002.37, Florida Statutes, are redesignated as subsections (7)
 1038 through (11), respectively, a new subsection (6) is added to
 1039 that section, and present subsections (6) and (11) of that
 1040 section are amended, to read:
 1041 1002.37 The Florida Virtual School.—
 1042 (6) The Florida Virtual School shall have an annual
 1043 financial audit of its accounts and records completed by an
 1044 independent auditor who is a certified public accountant

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1045 licensed under chapter 473. The independent auditor shall
 1046 conduct the audit in accordance with rules adopted by the
 1047 Auditor General pursuant to s. 11.45 and, upon completion of the
 1048 audit, shall prepare an audit report in accordance with such
 1049 rules. The audit report must include a written statement of the
 1050 board of trustees describing corrective action to be taken in
 1051 response to each of the independent auditor's recommendations
 1052 included in the audit report. The independent auditor shall
 1053 submit the audit report to the board of trustees and the Auditor
 1054 General no later than 9 months after the end of the preceding
 1055 fiscal year.

1056 (7)~~(6)~~ The board of trustees shall annually submit to the
 1057 Governor, the Legislature, the Commissioner of Education, and
 1058 the State Board of Education, the audit report prepared pursuant
 1059 to subsection (6) and a complete and detailed report setting
 1060 forth:

1061 (a) The operations and accomplishments of the Florida
 1062 Virtual School within the state and those occurring outside the
 1063 state as Florida Virtual School Global.

1064 (b) The marketing and operational plan for the Florida
 1065 Virtual School and Florida Virtual School Global, including
 1066 recommendations regarding methods for improving the delivery of
 1067 education through the Internet and other distance learning
 1068 technology.

1069 (c) The assets and liabilities of the Florida Virtual
 1070 School and Florida Virtual School Global at the end of the
 1071 fiscal year.

1072 ~~(d) A copy of an annual financial audit of the accounts and~~
 1073 ~~records of the Florida Virtual School and Florida Virtual School~~

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1074 ~~Global, conducted by an independent certified public accountant~~
 1075 ~~and performed in accordance with rules adopted by the Auditor~~
 1076 ~~General.~~

1077 ~~(e)~~ Recommendations regarding the unit cost of providing
 1078 services to students through the Florida Virtual School and
 1079 Florida Virtual School Global. In order to most effectively
 1080 develop public policy regarding any future funding of the
 1081 Florida Virtual School, it is imperative that the cost of the
 1082 program is accurately identified. The identified cost of the
 1083 program must be based on reliable data.

1084 ~~(e)~~~~(f)~~ Recommendations regarding an accountability
 1085 mechanism to assess the effectiveness of the services provided
 1086 by the Florida Virtual School and Florida Virtual School Global.

1087 ~~(11) The Auditor General shall conduct an operational audit~~
 1088 ~~of the Florida Virtual School, including Florida Virtual School~~
 1089 ~~Global. The scope of the audit shall include, but not be limited~~
 1090 ~~to, the administration of responsibilities relating to~~
 1091 ~~personnel, procurement and contracting; revenue production;~~
 1092 ~~school funds, including internal funds; student enrollment~~
 1093 ~~records; franchise agreements; information technology~~
 1094 ~~utilization, assets, and security; performance measures and~~
 1095 ~~standards; and accountability. The final report on the audit~~
 1096 ~~shall be submitted to the President of the Senate and the~~
 1097 ~~Speaker of the House of Representatives no later than January~~
 1098 ~~31, 2014.~~

1099 Section 25. Subsection (5) is added to section 1010.01,
 1100 Florida Statutes, to read:

1101 1010.01 Uniform records and accounts.—

1102 (5) Each school district, Florida College System

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1103 institution, and state university shall establish and maintain
 1104 internal controls designed to:
 1105 (a) Prevent and detect fraud, waste, and abuse.
 1106 (b) Promote and encourage compliance with applicable laws,
 1107 rules, contracts, grant agreements, and best practices.
 1108 (c) Support economical and efficient operations.
 1109 (d) Ensure reliability of financial records and reports.
 1110 (e) Safeguard assets.
 1111 Section 26. Subsection (2) of section 1010.30, Florida
 1112 Statutes, is amended to read:
 1113 1010.30 Audits required.—
 1114 (2) If a school district, Florida College System
 1115 institution, or university audit report includes a
 1116 recommendation that was previously included in the preceding
 1117 financial audit report, an audit contains a significant finding,
 1118 the district school board, the Florida College System
 1119 institution board of trustees, or the university board of
 1120 trustees, within 60 days after the delivery of the audit report
 1121 to the school district, Florida College System institution, or
 1122 university and shall conduct an audit overview during a
 1123 regularly scheduled public meeting, shall indicate its intent
 1124 regarding corrective action, the corrective action to be taken,
 1125 and when the corrective action will occur. If the district
 1126 school board, Florida College System institution board of
 1127 trustees, or university board of trustees does not intend to
 1128 take corrective action, it shall explain why such action will
 1129 not be taken at the regularly scheduled public meeting.
 1130 Section 27. Subsection (2) of section 68.082, Florida
 1131 Statutes, is amended to read:

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1132 68.082 False claims against the state; definitions;
 1133 liability.—
 1134 (2) Any person who:
 1135 (a) Knowingly presents or causes to be presented a false or
 1136 fraudulent claim for payment or approval;
 1137 (b) Knowingly authorizes, approves, or receives payment of
 1138 prohibited compensation in violation of s. 215.425;
 1139 ~~(c)~~ (b) Knowingly makes, uses, or causes to be made or used
 1140 a false record or statement material to a false or fraudulent
 1141 claim;
 1142 ~~(d)~~ (e) Conspires to commit a violation of this subsection;
 1143 ~~(e)~~ (d) Has possession, custody, or control of property or
 1144 money used or to be used by the state and knowingly delivers or
 1145 causes to be delivered less than all of that money or property;
 1146 ~~(f)~~ (e) Is authorized to make or deliver a document
 1147 certifying receipt of property used or to be used by the state
 1148 and, intending to defraud the state, makes or delivers the
 1149 receipt without knowing that the information on the receipt is
 1150 true;
 1151 ~~(g)~~ (f) Knowingly buys or receives, as a pledge of an
 1152 obligation or a debt, public property from an officer or
 1153 employee of the state who may not sell or pledge the property;
 1154 or
 1155 ~~(h)~~ (g) Knowingly makes, uses, or causes to be made or used
 1156 a false record or statement material to an obligation to pay or
 1157 transmit money or property to the state, or knowingly conceals
 1158 or knowingly and improperly avoids or decreases an obligation to
 1159 pay or transmit money or property to the state
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1161 is liable to the state for a civil penalty of not less than
 1162 \$5,500 and not more than \$11,000 and for treble the amount of
 1163 damages the state sustains because of the act of that person.

1164 Section 28. Subsection (1) of section 68.083, Florida
 1165 Statutes, is amended to read:

1166 68.083 Civil actions for false claims.—

1167 (1) The department may diligently investigate a violation
 1168 under s. 68.082. If the department finds that a person has
 1169 violated or is violating s. 68.082, the department may bring a
 1170 civil action under the Florida False Claims Act against the
 1171 person. The Department of Financial Services may bring a civil
 1172 action under this section if the action arises from an
 1173 investigation by that department and the Department of Legal
 1174 Affairs has not filed an action under this act. For a violation
 1175 of s. 68.082 regarding prohibited compensation paid from state
 1176 funds, the Department of Financial Services may bring a civil
 1177 action under this section if the action arises from an
 1178 investigation by that department concerning a violation of s.
 1179 215.425 by the state and the Department of Legal Affairs has not
 1180 filed an action under this act.

1181 Section 29. Subsection (3) of section 218.503, Florida
 1182 Statutes, is amended to read:

1183 218.503 Determination of financial emergency.—

1184 (3) Upon notification that one or more of the conditions in
 1185 subsection (1) have occurred or will occur if action is not
 1186 taken to assist the local governmental entity or district school
 1187 board, the Governor or his or her designee shall contact the
 1188 local governmental entity or the Commissioner of Education or
 1189 his or her designee shall contact the district school board to

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1190 determine what actions have been taken by the local governmental
 1191 entity or the district school board to resolve or prevent the
 1192 condition. The information requested must be provided within 45
 1193 days after the date of the request. If the local governmental
 1194 entity or the district school board does not comply with the
 1195 request, the Governor or his or her designee or the Commissioner
 1196 of Education or his or her designee shall notify ~~the members of~~
 1197 the Legislative Auditing Committee, which ~~he~~ may take action
 1198 pursuant to s. 11.40(2) ~~s. 11.40~~. The Governor or the
 1199 Commissioner of Education, as appropriate, shall determine
 1200 whether the local governmental entity or the district school
 1201 board needs state assistance to resolve or prevent the
 1202 condition. If state assistance is needed, the local governmental
 1203 entity or district school board is considered to be in a state
 1204 of financial emergency. The Governor or the Commissioner of
 1205 Education, as appropriate, has the authority to implement
 1206 measures as set forth in ss. 218.50-218.504 to assist the local
 1207 governmental entity or district school board in resolving the
 1208 financial emergency. Such measures may include, but are not
 1209 limited to:

1210 (a) Requiring approval of the local governmental entity's
 1211 budget by the Governor or approval of the district school
 1212 board's budget by the Commissioner of Education.

1213 (b) Authorizing a state loan to a local governmental entity
 1214 and providing for repayment of same.

1215 (c) Prohibiting a local governmental entity or district
 1216 school board from issuing bonds, notes, certificates of
 1217 indebtedness, or any other form of debt until such time as it is
 1218 no longer subject to this section.

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1219 (d) Making such inspections and reviews of records,
 1220 information, reports, and assets of the local governmental
 1221 entity or district school board as are needed. The appropriate
 1222 local officials shall cooperate in such inspections and reviews.

1223 (e) Consulting with officials and auditors of the local
 1224 governmental entity or the district school board and the
 1225 appropriate state officials regarding any steps necessary to
 1226 bring the books of account, accounting systems, financial
 1227 procedures, and reports into compliance with state requirements.

1228 (f) Providing technical assistance to the local
 1229 governmental entity or the district school board.

1230 (g)1. Establishing a financial emergency board to oversee
 1231 the activities of the local governmental entity or the district
 1232 school board. If a financial emergency board is established for
 1233 a local governmental entity, the Governor shall appoint board
 1234 members and select a chair. If a financial emergency board is
 1235 established for a district school board, the State Board of
 1236 Education shall appoint board members and select a chair. The
 1237 financial emergency board shall adopt such rules as are
 1238 necessary for conducting board business. The board may:

1239 a. Make such reviews of records, reports, and assets of the
 1240 local governmental entity or the district school board as are
 1241 needed.

1242 b. Consult with officials and auditors of the local
 1243 governmental entity or the district school board and the
 1244 appropriate state officials regarding any steps necessary to
 1245 bring the books of account, accounting systems, financial
 1246 procedures, and reports of the local governmental entity or the
 1247 district school board into compliance with state requirements.

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

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1248 c. Review the operations, management, efficiency,
 1249 productivity, and financing of functions and operations of the
 1250 local governmental entity or the district school board.

1251 d. Consult with other governmental entities for the
 1252 consolidation of all administrative direction and support
 1253 services, including, but not limited to, services for asset
 1254 sales, economic and community development, building inspections,
 1255 parks and recreation, facilities management, engineering and
 1256 construction, insurance coverage, risk management, planning and
 1257 zoning, information systems, fleet management, and purchasing.

1258 2. The recommendations and reports made by the financial
 1259 emergency board must be submitted to the Governor for local
 1260 governmental entities or to the Commissioner of Education and
 1261 the State Board of Education for district school boards for
 1262 appropriate action.

1263 (h) Requiring and approving a plan, to be prepared by
 1264 officials of the local governmental entity or the district
 1265 school board in consultation with the appropriate state
 1266 officials, prescribing actions that will cause the local
 1267 governmental entity or district school board to no longer be
 1268 subject to this section. The plan must include, but need not be
 1269 limited to:

1270 1. Provision for payment in full of obligations outlined in
 1271 subsection (1), designated as priority items, which are
 1272 currently due or will come due.

1273 2. Establishment of priority budgeting or zero-based
 1274 budgeting in order to eliminate items that are not affordable.

1275 3. The prohibition of a level of operations which can be
 1276 sustained only with nonrecurring revenues.

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1277 4. Provisions implementing the consolidation, sourcing, or
 1278 discontinuance of all administrative direction and support
 1279 services, including, but not limited to, services for asset
 1280 sales, economic and community development, building inspections,
 1281 parks and recreation, facilities management, engineering and
 1282 construction, insurance coverage, risk management, planning and
 1283 zoning, information systems, fleet management, and purchasing.

1284 Section 30. Subsection (2) of section 1002.455, Florida
 1285 Statutes, is amended to read:

1286 1002.455 Student eligibility for K-12 virtual instruction.-

1287 (2) A student is eligible to participate in virtual
 1288 instruction if:

1289 (a) The student spent the prior school year in attendance
 1290 at a public school in the state and was enrolled and reported by
 1291 the school district for funding during October and February for
 1292 purposes of the Florida Education Finance Program surveys;

1293 (b) The student is a dependent child of a member of the
 1294 United States Armed Forces who was transferred within the last
 1295 12 months to this state from another state or from a foreign
 1296 country pursuant to a permanent change of station order;

1297 (c) The student was enrolled during the prior school year
 1298 in a virtual instruction program under s. 1002.45 or a full-time
 1299 Florida Virtual School program under s. 1002.37(9)(a) ~~s.~~
 1300 ~~1002.37(8)(a)~~;

1301 (d) The student has a sibling who is currently enrolled in
 1302 a virtual instruction program and the sibling was enrolled in
 1303 that program at the end of the prior school year;

1304 (e) The student is eligible to enter kindergarten or first
 1305 grade; or

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1306 (f) The student is eligible to enter grades 2 through 5 and
 1307 is enrolled full-time in a school district virtual instruction
 1308 program, virtual charter school, or the Florida Virtual School.

1309 Section 31. The Legislature finds that a proper and
 1310 legitimate state purpose is served when internal controls are
 1311 established to prevent and detect fraud, waste, and abuse and to
 1312 safeguard and account for government funds and property.
 1313 Therefore, the Legislature determines and declares that this act
 1314 fulfills an important state interest.

1315 Section 32. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 1372
Bill Number (if applicable)

#897662
Amendment Barcode (if applicable)

Topic Government Accountability

Name Ben Wilcox

Job Title _____

Address 1719 Old Fort Dr.
Street

Phone 850-544-4448

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Common Cause 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

1372
Bill Number (if applicable)

897662
Amendment Barcode (if applicable)

Topic ETHICS

Name VIRGINIA DOSS

Job Title Executive Director

Address 325 John Knox Rd
Street

Phone 850 488 7864

Tallah, FL 32311
City State Zip

Email doss.virginia@leg.state.fl.us

Speaking: For Against Information

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

Representing FIA Commission on Ethics

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15
Meeting Date

1372
Bill Number (if applicable)

533978 by Joyner
Amendment Barcode (if applicable)

Topic Government Accountability

Name Nick Iarossi

Job Title _____

Address 101 E. College Ave. Ste 502
Street

Phone 222-9075

Tallahassee FL 32301
City State Zip

Email n.iarossi@capcityconsult.com

Speaking: For Against Information

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

Representing Safety Net Hospitals

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/2015
Meeting Date

1372
Bill Number (if applicable)

533978
Amendment Barcode (if applicable)

Topic Gov't Accountability

Name Jan Goreie

Job Title Lobbyist

Address 402 E. Park
Street

Phone 813-334-5288

Tallah. FL 32361
City State Zip

Email jan@ballandfl.com

Speaking: For Against Information

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

Representing Tampa Port Authority

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)

4/15/15
Meeting Date

SB 1372
Bill Number (if applicable)

381578
Amendment Barcode (if applicable)

Topic _____

Name Kraig Cann

Job Title _____

Address 301 S. Branch
Street

Phone 222 9684

Tall. FL 32301
City State Zip

Email Kcann@flcities.com

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case:
Judge:

Type:

Started: 4/15/2015 9:03:22 AM

Ends: 4/15/2015 12:00:23 PM

Length: 02:57:02

9:03:24 AM Senator Simmons calls the meeting to order
9:03:33 AM Roll call
9:03:54 AM Quorum Present
9:06:27 AM SB 1078
9:06:50 AM Senator Sobel explains the bill
9:08:23 AM Senator Soto with a question
9:08:56 AM Senator Gibson with a question
9:09:09 AM Senator Sobel responds
9:09:20 AM Senator Gibson with a follow up
9:09:28 AM Senator Sobel responds
9:09:40 AM Senator Gibson with a follow up
9:09:52 AM Senator Sobel responds
9:10:27 AM Greg Pound, Saving Florida Families, speaks against the bill
9:13:02 AM Senator Sobel closes on the bill
9:13:29 AM Roll call
9:13:56 AM SB 1078 is reported favorably
9:14:08 AM CS/SB 1314
9:15:14 AM Senator Bradley explains the bill
9:16:15 AM Kenneth Pratt, Senior VP of Governmental Affairs, Florida Bankers Association, waives in support
9:16:48 AM Senator Bradley waives close
9:16:55 AM Roll call
9:17:15 AM CS/SB 1314 is reported favorably
9:17:58 AM CS/SB 240
9:18:08 AM Senator Brandes explains the bill
9:18:27 AM Senator Soto with a question
9:18:33 AM Senator Brandes responds
9:18:51 AM Senator Brandes waives close
9:19:00 AM Roll call
9:19:26 AM CS/SB 240 is reported favorably
9:19:46 AM CS/CS/SB 102
9:19:53 AM Senator Hukill explains the bill
9:21:34 AM Senator Latvala with a question
9:23:32 AM Senator Hukill responds
9:26:34 AM Senator Latvala with a follow up
9:26:54 AM Senator Hukill responds
9:27:39 AM Senator Latvala with a follow up
9:27:50 AM Senator Hukill responds
9:28:23 AM Senator Latvala with a follow up
9:28:51 AM Senator Hukill responds
9:29:42 AM Senator Latvala with a follow up
9:29:52 AM Senator Hukill responds
9:30:51 AM Senator Gaetz with a question
9:31:09 AM Senator Hukill responds
9:32:36 AM Senator Benacquisto with a question
9:33:09 AM Senator Hukill responds
9:35:05 AM Senator Gaetz with a question
9:35:49 AM Senator Hukill responds
9:37:21 AM Travis Hayes, Estate Planning Attorney, Real Property, Probate & Trust Law Section of the Florida Bar speaks for the bill
9:41:11 AM Michelle Richardson, Director of Public Policy, ACLU of Florida, speaks against the bill
9:43:11 AM Senator Diaz de la Portilla with a question
9:43:38 AM Michelle Richardson responds

9:44:15 AM Senator Diaz de la Portilla with a follow up
9:44:34 AM Michelle Richardson responds
9:44:54 AM Senator Diaz de la Portilla with a follow up
9:45:16 AM Michelle Richardson responds
9:45:43 AM Senator Diaz de la Portilla with a follow up
9:45:53 AM Michelle Richardson responds
9:46:02 AM Senator Diaz de la Portilla with a follow up
9:46:23 AM Michelle Richardson responds
9:46:34 AM Senator Diaz de la Portilla with a follow up
9:47:02 AM Michelle Richardson responds
9:47:17 AM Senator Simmons with a question
9:47:52 AM Michelle Richardson responds
9:48:21 AM Senator Simmons with a follow up
9:48:50 AM Michelle Richardson responds
9:49:21 AM Sebastian Aleksander, Yahoo, waives in opposition
9:49:38 AM Steven DelBianco, Executive Director, NetChoice, speaks against the bill
9:54:05 AM Senator Diaz de la Portilla with a question
9:54:25 AM Steven DelBianco responds
9:54:33 AM Senator Diaz de la Portilla with a follow up
9:54:46 AM Steven DelBianco responds
9:55:14 AM Senator Diaz de la Portilla with a follow up
9:55:28 AM Steven DelBianco responds
9:56:25 AM Senator Montford with a question
9:57:01 AM Steven DelBianco responds
9:57:59 AM Dan Sachs, Associate Manager, State Policy, Facebook, speaks against the bill
9:59:07 AM Kenneth Pratt, Florida Bankers Association, waives in support
9:59:22 AM Justin Sayfie, Attorney representing Google, waives in opposition
9:59:53 AM Senator Hukill speaks on the bill
10:00:29 AM Senator Hukill waives close
10:00:39 AM Roll call
10:01:13 AM CS/CS/SB 102 is reported favorably
10:01:39 AM CS/SB 282
10:01:53 AM Senator Hukill explains the bill
10:02:34 AM PCS 692926 taken up without objection
10:03:18 AM Senator Hukill waives close
10:03:27 AM Roll call
10:03:51 AM CS/CS/SB 282 is reported favorably
10:04:24 AM SB 984
10:04:41 AM Senator Braynon explains the bill
10:05:17 AM Senator Soto with a question
10:05:23 AM Senator Braynon responds
10:05:40 AM Senator Braynon waives close
10:05:51 AM Roll call
10:06:14 AM SB 984 is reported favorably
10:07:16 AM SB 7060
10:07:21 AM Eric Hinton, Analyst with Environmental Preservation & Conservation Committee, explains the bill
10:08:03 AM Eric Hinton waives close
10:08:14 AM Roll call
10:08:36 AM SB 7060 is reported favorably
10:08:48 AM SB 7062
10:08:53 AM Eric Hinton, Analyst explains the bill
10:09:24 AM Steve Minnis, Governmental Affairs & Communications Directors, representing Suwannee River Water Management District, waives in support
10:09:54 AM Eric Hinton waives close
10:10:01 AM Roll call
10:10:15 AM SB 7062 is reported favorably
10:10:45 AM CS/SB 524
10:11:00 AM Senator Soto explains the bill
10:11:17 AM Amendment 671292
10:11:32 AM Senator Soto explains the amendment
10:12:10 AM Kenneth Pratt, Florida Bankers Association, waives in support
10:12:36 AM Senator Soto waives close on amendment

10:12:48 AM Without objection, amendment is adopted
10:12:58 AM Back on bill as amended
10:13:03 AM Arthur Rosenberg, Attorney, representing Florida Legal Services, waives in support of the bill
10:13:10 AM Alice Vickers, Attorney, representing the FL Alliance for Consumer Protection, waives in support
10:13:18 AM Kenneth Pratt, Florida Bankers Association, waives in support
10:13:32 AM Senator Soto waives close
10:13:38 AM Roll call
10:13:57 AM CS/CS/SB 524 is reported favorably
10:14:16 AM CS/CS/SB 1324
10:14:26 AM Senator Latvala explains the bill
10:15:30 AM Senator Joyner with a question
10:15:43 AM Senator Latvala responds
10:15:49 AM Senator Joyner with a follow up
10:16:00 AM Senator Latvala responds
10:16:11 AM Amendment 120406
10:16:19 AM Senator Latvala explains the amendment
10:17:14 AM Senator Latvala waives close on the amendment
10:17:25 AM Without objection, amendment 120406 is adopted
10:17:45 AM Amendment 310864 is withdrawn
10:17:53 AM Back on the bill as amended
10:18:03 AM Senator Gibson with a question
10:18:34 AM Senator Latvala responds
10:19:11 AM Senator Gibson with a follow up
10:19:21 AM Senator Latvala responds
10:19:45 AM James Viggiano, Capital Collateral Regional Counsel, waives in support
10:19:55 AM Robert Trammel, General Counsel, Florida Public Defender Association, Inc., waives in support
10:20:01 AM Matthew Dunagan, Deputy Director, Florida Sheriffs Association, waives in support
10:20:07 AM Matt Puckett, Florida Police Benevolent Association, waives in support
10:20:19 AM Senator Latvala waives close
10:20:32 AM Roll call
10:20:45 AM CS/CS/CS/SB 1324 is reported favorably
10:21:06 AM CS/SB 1048
10:21:15 AM PCS 654822
10:21:49 AM Senator Garcia explains the bill
10:24:24 AM Amendment 949918 to the PCS admitted without objection
10:25:27 AM Senator Garcia explains the amendment 949918
10:25:57 AM Senator Joyner with a question
10:26:09 AM Senator Garcia responds
10:26:54 AM Senator Garcia waives close on amendment 949918
10:27:11 AM Amendment 949918 is adopted without objection
10:27:18 AM Back on PCS as amended
10:27:40 AM Laura Dooley, Director, State Affairs, representing Alliance of Automobile Manufacturers, speaks against the bill
10:30:15 AM Senator Montford with a question
10:30:32 AM Laura Dooley responds
10:30:59 AM Jeff Perry,
10:31:03 AM Director, State Government Affairs, General Motors, speaks against the bill
10:36:16 AM Senator Joyner with a question
10:36:39 AM Jeff Perry responds
10:37:22 AM Senator Joyner with a follow up
10:37:34 AM Jeff Perry responds
10:37:40 AM Senator Joyner with a follow up
10:37:46 AM Jeff Perry responds
10:37:52 AM Senator Gibson with a question
10:38:42 AM Jeff Perry responds
10:39:52 AM Senator Gibson with a follow up
10:40:14 AM Jeff Perry responds
10:40:31 AM Senator Gibson with a follow up
10:41:17 AM Jeff Perry responds
10:42:11 AM Senator Montford with a question
10:42:35 AM Jeff Perry responds
10:44:42 AM Senator Latvala with a question

10:45:44 AM Senator Simmons comments
10:46:04 AM Senator Latvala with a question
10:46:06 AM Senator Simmons responds
10:46:26 AM Senator Garcia comments
10:46:34 AM Senator Gibson with a question
10:46:49 AM Senator Simmons comments
10:46:59 AM David Leibowitz, Asst. Secretary, Braman Automotive Group, Braman Management Association, speaks for the bill
10:47:19 AM Senator Simmons with a question
10:47:22 AM David Leibowitz responds
10:54:21 AM Senator Diaz de la Portilla with a question
10:54:48 AM David Leibowitz responds
10:56:19 AM Ron Book, AutoNation, speaks for the bill
10:59:48 AM Diane Caar, Alliance of Automobile Manufacturers, speaks against the bill
11:03:08 AM Senator Soto with a question
11:03:23 AM Diane Caar responds
11:04:25 AM Misti Rice, Senior Manager State Affairs, Fiat Chrysler Automobiles, waives in opposition
11:05:04 AM Senator Joyner speaks in debate
11:08:55 AM Senator Garcia closes on the bill
11:10:43 AM Roll call
11:11:05 AM CS/CS/SB 1048 is reported favorably
11:11:25 AM CS/CS/SB 1372
11:11:49 AM Senator Gaetz explains the bill
11:13:29 AM Amendment 897662
11:13:52 AM Senator Gaetz explains the amendment
11:16:02 AM Amendment 287580 to amendment
11:16:22 AM Senator Gaetz explains the amendment to the amendment
11:16:44 AM Senator Gaetz waives close on amendment to the amendment
11:17:08 AM Without objection, amendment to the amendment is adopted
11:17:37 AM Back on amendment 897662 as amended
11:17:48 AM Ben Wilcox, Common Cause Florida, speaks against the amendment
11:19:20 AM Senator Joyner with a question
11:19:37 AM Ben Wilcox responds
11:19:54 AM Senator Joyner with a follow up
11:20:04 AM Ben Wilcox responds
11:20:25 AM Senator Montford with a question
11:20:59 AM Ben Wilcox responds
11:22:23 AM Virindia Doss, Executive Director, Florida Commission on Ethics, speaks on the amendment
11:22:33 AM Senator Montford with a question
11:23:17 AM Virindia Doss responds
11:26:16 AM Senator Simmons with a question
11:26:42 AM Virindia Doss responds
11:26:53 AM Senator Joyner with a question
11:27:33 AM Virindia Doss responds
11:28:04 AM Senator Soto with a question
11:28:19 AM Virindia Doss responds
11:28:54 AM Senator Montford with a question
11:29:59 AM Virindia Doss responds
11:30:54 AM Senator Diaz de la Portilla speaks in debate
11:31:55 AM Senator Lee speaks in debate
11:34:53 AM Senator Joyner speaks in debate
11:37:34 AM Senator Montford speaks in debate
11:39:30 AM Senator Gaetz closes on amendment 897662 as amended
11:44:52 AM Voice vote - amendment 897662 is adopted
11:45:08 AM Amendment 381578
11:45:14 AM Senator Gaetz explains the amendment
11:46:17 AM Senator Joyner with a question
11:46:29 AM Senator Gaetz responds
11:47:57 AM Substitute Amendment 533978
11:48:16 AM Senator Joyner explains the substitute amendment
11:52:04 AM Senator Gaetz comments on the amendment
11:52:30 AM A motion is made for an 11:57 time certain vote

11:52:53 AM Senator Latvala speaks in debate
11:53:57 AM Senator Richter speaks in debate
11:55:33 AM Nick Iarossi, Safety Net Hospitals, waives in support of substitute amendment
11:56:00 AM Jan Gorrie, Tampa Port Authority, waives in favor of substitute amendment
11:56:31 AM Modification of time certain vote to 11:59
11:56:41 AM Senator Gaetz speaks on the substitute amendment
11:57:49 AM Roll call on substitute amendment 533978
11:58:31 AM Substitute Amendment is adopted
11:58:45 AM Motion to TP the bill
12:00:16 PM Senator Galvano moves we adjourn - without objection



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD
3rd District

April 13, 2015

Senator David Simmons, Chair
Senate Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

4/14/15
O.K.
NWS

Dear Chairman Simmons:

I will be presenting a bill in the Transportation Committee (the only bill on the agenda) at 9:00 am Wednesday, April 15, 2015, and I will then go to the Fiscal Policy Committee Meeting where I am scheduled to present two bills. My plans are to attend the Rules Committee meeting; however, just in case I am unable to make it to the Rules Committee before you conclude the agenda, I respectfully request that I be excused from the Senate Rules Committee.

Your assistance and favorable consideration of my request is greatly appreciated

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: John Phelps, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore