

<b>Tab 1</b>	<b>CS/SB 96</b> by <b>CJ, Bean (CO-INTRODUCERS) Hutson, Book, Wright, Perry;</b> (Similar to H 00067) Police, Fire, and Search and Rescue Dogs and Police Horses					
462062	A	S	RCS	RC, Bean	Delete L.25 - 35:	03/21 02:28 PM
<b>Tab 2</b>	<b>SB 310</b> by <b>Perry (CO-INTRODUCERS) Broxson;</b> (Identical to H 00659) Off-highway Vehicles					
<b>Tab 3</b>	<b>CS/CS/SB 462</b> by <b>CA, JU, Powell;</b> (Similar to CS/CS/1ST ENG/H 00091) Judicial Process					
890030	A	S	RCS	RC, Powell	Delete L.64 - 65:	03/21 02:32 PM
720962	A	S	RCS	RC, Powell	Delete L.166:	03/21 02:32 PM
<b>Tab 4</b>	<b>CS/SB 494</b> by <b>GO, Hooper (CO-INTRODUCERS) Broxson;</b> (Similar to H 00161) Firefighters' Bill of Rights					
806688	A	S	RCS	RC, Hooper	btw L.29 - 30:	03/21 02:34 PM
<b>Tab 5</b>	<b>SB 7052</b> by <b>BI;</b> (Compare to H 00759) OGSR/Informal Enforcement Actions/Trade Secrets/Office of Financial Regulation					
<b>Tab 6</b>	<b>SJR 690</b> by <b>Rodriguez;</b> (Compare to H 00053) Single Subject Limitation for Taxation and Budget Reform Commission					
<b>Tab 7</b>	<b>SB 7010</b> by <b>JU;</b> (Identical to H 07025) OGSR/Treatment-based Drug Court Programs					
<b>Tab 8</b>	<b>SB 7036</b> by <b>IS;</b> (Identical to H 07007) OGSR/Payment of Toll on Toll Facilities/Identifying Information					

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**

**Senator Benacquisto, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Thursday, March 21, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** Toni Jennings Committee Room, 110 Senate Building

**MEMBERS:** Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 96</b> Criminal Justice / Bean (Similar H 67)	Police, Fire, and Search and Rescue Dogs and Police Horses; Increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines or horses, fire canines, or SAR canines, etc.  CJ 02/04/2019 CJ 02/11/2019 Fav/CS JU 03/11/2019 Favorable RC 03/21/2019 Fav/CS	Fav/CS Yeas 15 Nays 0
2	<b>SB 310</b> Perry (Identical H 659)	Off-highway Vehicles; Redefining the terms "ATV" and "ROV" to increase the authorized width and dry weight of such vehicles; redefining the term "all-terrain vehicle" to increase the authorized width and dry weight of the vehicle, etc.  AG 02/11/2019 Favorable CA 03/05/2019 Favorable RC 03/21/2019 Favorable	Favorable Yeas 16 Nays 0
3	<b>CS/CS/SB 462</b> Community Affairs / Judiciary / Powell (Similar CS/CS/H 91)	Judicial Process; Providing that a person who acquires for value a lien on property during the course of specified legal actions takes such lien free of claims in certain circumstances; specifying the effect of a valid, recorded notice of lis pendens in certain circumstances involving a judicial sale; revising requirements for substituted service on the spouse of the person to be served; exempting certified process servers from certain window sunscreening restrictions, etc.  JU 02/11/2019 Fav/CS CA 03/05/2019 Fav/CS RC 03/21/2019 Fav/CS	Fav/CS Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

## Rules

Thursday, March 21, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 494</b> Governmental Oversight and Accountability / Hooper (Similar H 161)	Firefighters' Bill of Rights; Revising the definition of the term "interrogation" to include questioning pursuant to an informal inquiry; requiring that witnesses be interviewed and certain information be provided to a firefighter subjected to interrogation before the interrogation is conducted; prohibiting a firefighter from being threatened with certain disciplinary action during the course of an interrogation, etc.  CA 03/05/2019 Favorable GO 03/12/2019 Fav/CS RC 03/21/2019 Fav/CS	Fav/CS Yeas 17 Nays 0
5	<b>SB 7052</b> Banking and Insurance (Compare H 759, S 1416)	OGSR/Informal Enforcement Actions/Trade Secrets/Office of Financial Regulation; Amending provisions relating to exemptions from public records requirements for informal enforcement actions by the Office of Financial Regulation and certain trade secrets held by the office under the financial institutions codes; removing the scheduled repeal of the exemptions, etc.  GO 03/12/2019 Favorable RC 03/21/2019 Favorable	Favorable Yeas 17 Nays 0
6	<b>SJR 690</b> Rodriguez (Compare HJR 53)	Single Subject Limitation for Taxation and Budget Reform Commission; Proposing an amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject, etc.  JU 03/04/2019 Favorable EE 03/12/2019 Favorable RC 03/21/2019 Favorable	Favorable Yeas 16 Nays 0
7	<b>SB 7010</b> Judiciary (Identical H 7025)	OGSR/Treatment-based Drug Court Programs; Amending provisions relating to an exemption from public records requirements for certain information relating to screenings for participation in treatment-based drug court programs and subsequent treatment status reports; removing the scheduled repeal of the exemption, etc.  GO 02/19/2019 Favorable RC 03/21/2019 Favorable	Favorable Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, March 21, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 7036</b> Infrastructure and Security (Identical H 7007)	OGSR/Payment of Toll on Toll Facilities/Identifying Information; Amending a specified provision which provides an exemption from public records requirements for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for certain purposes; deleting the scheduled repeal of the exemption, etc.  GO 03/06/2019 Favorable RC 03/21/2019 Favorable	Favorable Yeas 17 Nays 0

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Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 96

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Bean and others

SUBJECT: Police, Fire, and Search and Rescue Dogs and Police Horses

DATE: March 21, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Fav/CS</b>
2.	Farach	Cibula	JU	<b>Favorable</b>
3.	Storch	Phelps	RC	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 96 increases the penalty from a third degree felony to a second degree felony for intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police, fire, or search and rescue (SAR) canine, or a police horse. Additionally, the bill makes the corresponding changes to the offense severity ranking chart.

The bill expands the definitions of police canine and SAR canine to include a canine that is owned, or the service of which is employed, by a correctional agency.

The bill also replaces the word “dog” with the word “canine” in ss. 767.16 and 843.19, F.S.

The Criminal Justice Impact Conference estimates that the bill would result in a “positive insignificant” prison bed impact (10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## II. Present Situation:

### Special K-9 and mounted units

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. In 2017, there were 140 police departments and 65 sheriff's offices with active canine units.<sup>1</sup> These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,<sup>2</sup> and building and article searches.<sup>3</sup> Additionally, some fire departments use dogs as part of arson detection programs.<sup>4</sup> Various non-profit organizations also use dogs for the purpose of search and rescue, such as the Community Emergency Response Team, which provides support to the Federal Emergency Management Agency.<sup>5</sup>

Additionally, the Department of Corrections (DOC) employs canines for both contraband interdiction and tracking. Specifically, the canines tasked with prohibiting the introduction of contraband into correctional facilities and onto the DOC property are certified narcotic, cell phone, or munitions detection canines. The canines utilized for tracking help to recapture inmates who have escaped and assist law enforcement agencies in searches for missing children.<sup>6</sup>

Though not as frequently used as K-9 units, select law enforcement agencies throughout the state have mounted units,<sup>7</sup> whereby specially-trained horses are used to assist with crowd control, special events, and additional patrol functions, among other tasks.<sup>8</sup>

### Offenses against police animals

Intentional offenses against police animals most often occur while the animals are on duty. Because of this, offenses against police horses are infrequent because mounted units are most commonly used for non-crime related purposes. However, one instance of intentional harm

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<sup>1</sup> Information provided by email from Amy Mercer, Executive Director, The Florida Police Chiefs Association (January 15, 2019) (on file with Senate Criminal Justice Committee).

<sup>2</sup> City of Orlando, *K-9 Unit*, available at <http://www.cityoforlando.net/police/k-9-unit/> (last visited Mar. 6, 2019).

<sup>3</sup> St. Petersburg Police Department, *K-9 Unit*, available at <http://police.stpete.org/usb/k-9.html> (last visited Mar. 6, 2019).

<sup>4</sup> City of Orlando, *Accelerant Detection Canines*, available at <http://www.cityoforlando.net/fire/accelerant-detection-canines/> (last visited January 24, 2019).

<sup>5</sup> Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, available at <https://www.boondocksk9.org/> (last visited January 24, 2019).

<sup>6</sup> Department of Corrections, *2019 Agency Legislative Bill Analysis for SB 96*, (January 29, 2019) (on file with the Rules Committee).

<sup>7</sup> The following agencies have mounted units: Escambia County Sheriff's Office *see* <http://www.escambiaso.com/mounted-unit/>; Hillsborough County Sheriff's Office *see* <http://www.hcso.tampa.fl.us/A-Z-Directory/M/Mounted-Unit.aspx>; Key West Police Department *see* <https://www.cityofkeywest-fl.gov/departments/division.php?structureid=147>; Marion County Sheriff's Office *see* <http://www.marionso.com/mounted-unit/>; Orlando Police Department *see* <http://www.cityoforlando.net/police/mounted-patrol/>; Palm Beach County Sheriff's Office *see* <https://www.pbso.org/services/countywide-operations/mounted-unit/>; Pinellas Park Police Department *see* <https://www.pinellas-park.com/642/Mounted-Patrol>; and St. Petersburg Police Department *see* <http://police.stpete.org/usb/mounted-unit.html> (last visited Mar. 6, 2019).

<sup>8</sup> City of Orlando, *Mounted Patrol*, available at <http://www.cityoforlando.net/police/mounted-patrol/> (last visited Mar. 6, 2019).

occurred several years ago when an attendee at the Gasparilla parade in Tampa punched a horse that was used to patrol the event.<sup>9</sup>

In contrast, police dogs are frequently used in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase after fleeing felons. As a result, the dogs can be caught in the line of fire while on the job. Two recent incidents resulted in the death of a police dog while the dog was on duty. In September 2018, 3-year old Fang, a member of Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.<sup>10</sup> Similarly, in December 2018, Palm Beach County Sheriff's Office's canine, 3-year-old Cigo, was shot and killed by an attempted murder suspect outside of a shopping mall.<sup>11</sup>

### **Protecting police animals from intentional harm**

In an effort to deter intentional harm toward police animals, legislation aimed at creating stiffer penalties for those crimes has been introduced at both the federal and state level. In August 2000, Congress passed the Federal Law Enforcement Animal Protection Act of 2000, which made it a crime to willfully and maliciously harm a police animal, or attempt or conspire to do so, resulting in a penalty of imprisonment for up to one year. Additionally, permanently disabling or causing serious bodily injury or death to a police animal may result in a term of imprisonment of up to 10 years under the act.<sup>12</sup>

Similar efforts to increase penalties for crimes against police animals have been attempted at the state level as well. In Utah, legislation was introduced in 2018 to increase the penalty from a third degree felony to a second degree felony for intentionally or knowingly causing death to a police dog.<sup>13</sup> Additionally, in South Carolina, legislation in 2018 named after two police dogs that were killed in the line of duty<sup>14</sup> proposed to increase the penalty for harming a police animal to a maximum prison sentence of 10 years and a potential \$10,000 fine.<sup>15</sup> Current Michigan law provides that a person who intentionally kills or causes serious physical harm to a police dog, police horse, or search and rescue dog is guilty of a felony punishable by imprisonment of up to 5 years, a fine of up to \$10,000, or both.<sup>16</sup>

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<sup>9</sup> Ashley Yore, *Chad the police horse retires after 13 years of service in Tampa*, ABC ACTION NEWS (May 11, 2018), <https://www.abcactionnews.com/news/region-tampa/chad-the-police-horse-retires-after-13-years-of-service-in-tampa>.

<sup>10</sup> Colette DuChanois and Tarik Minor, *Audio, video evidence released in case of teen held in K-9's death*, NEWS4JAX (Nov. 12, 2018), <https://www.news4jax.com/news/local/jacksonville/new-evidence-details-case-against-teen-accused-of-killing-jso-k-9>.

<sup>11</sup> Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas eve, police say*, ABC NEWS (Dec. 25, 2018), <https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552>.

<sup>12</sup> 18 U.S.C.A. s. 1368.

<sup>13</sup> 2018 General Session, state of Utah, S.B. 57 (2018).

<sup>14</sup> Tim Smith, *Police dog protection: Stiffer penalty proposed for harming K-9s*, GREENVILLE NEWS (Feb. 13, 2018), <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/02/13/police-dog-protection-stiffer-penalty-proposed-harming-k-9-s/332391002/>.

<sup>15</sup> 122nd Session, South Carolina General Assembly, S. 6 (2017-18).

<sup>16</sup> MICHIGAN COMPILED LAWS ANN. s. 750.50c.

Currently, Florida law provides that it is a third degree felony<sup>17</sup> to intentionally and knowingly, without lawful cause or justification, cause great bodily harm, permanent disability, or death to, or use a deadly weapon upon a police dog, police horse, fire dog, or SAR dog.<sup>18</sup> Those animals have specific definitions in law and are defined in the following manner:

- “Police dog” and “police horse” means any dog or horse, respectively, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;
- “Fire dog” means any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detention of flammable materials or the investigation of fires; and
- “SAR dog” means any search and rescue dog that is owned, or the service of which is employed, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.<sup>19</sup>

### III. Effect of Proposed Changes:

The bill increases the penalty from a third degree felony to a second degree felony<sup>20</sup> for intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police, fire, or SAR canine, or a police horse. Additionally, the bill makes these corresponding changes to the offense severity ranking chart.<sup>21</sup>

The bill also expands the definitions of police canine and SAR canine to include a canine that is owned, or the service of which is employed, by a correctional agency.

Additionally, the bill replaces the word “dog” with the word “canine” in ss. 767.16 and 843.19, F.S.

The bill is effective October 1, 2019.

### IV. Constitutional Issues:

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

None.

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<sup>17</sup> Section 843.19(2), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>18</sup> Section 843.19(2), F.S.

<sup>19</sup> Section 843.19(1)(a)-(c), F.S.

<sup>20</sup> A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

<sup>21</sup> Section 921.0022, F.S.



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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has determined that this bill will result in a “positive insignificant” prison bed impact (10 or fewer prison beds). In fiscal year 2017-18, one person was sentenced pursuant to s. 843.19, F.S., and no offenders were sentenced to prison.<sup>22</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 767.16, 843.19, and 921.0022.

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<sup>22</sup> Office of Economic & Demographic Research, *Criminal Justice Impact Conference Narrative Analysis of CS/SB 96* (Feb. 27, 2019), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB96.pdf>.

**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 March 21, 2019:**

The Committee Substitute expands the definitions of police canine and SAR canine to include a canine that is owned, or the service of which is employed, by a correctional agency.

**CS by Criminal Justice on February 11, 2019:**

The Committee Substitute:

- Increases the penalty from a third degree felony to a second degree felony for intentionally and knowingly, without lawful cause or justification, causing great bodily harm or death, or using a deadly weapon upon, a police horse;
- Makes the corresponding revision to the offense severity ranking chart; and
- Replaces the term “dog” with “canine” in s. 767.16, F.S.

- B. **Amendments:**

None.



462062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
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The Committee on Rules (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 25 - 35  
and insert:  
is employed, by a law enforcement agency or a correctional  
agency for the principal purpose of aiding in the detection of  
criminal activity, enforcement of laws, or apprehension of  
offenders.

(b) "Fire canine ~~dog~~" means any canine ~~dog~~ that is owned,  
or the service of which is employed, by a fire department, a  
special fire district, or the State Fire Marshal for the



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principal purpose of aiding in the detection of flammable materials or the investigation of fires.

(c) "SAR canine ~~dog~~" means any search and rescue canine ~~dog~~ that is owned, or the service of which is employed ~~utilized~~, by a fire department, a law enforcement agency, a correctional agency, a special fire

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

And the title is amended as follows:

Delete line 6

and insert:

"SAR canine"; expanding the definitions of "police canine" and "SAR canine" to include any canine that is owned, or the service of which is employed, by a correctional agency; increasing the penalty for intentionally

By the Committee on Criminal Justice; and Senators Bean, Hutson,  
Book, and Wright

591-02307A-19

201996c1

A bill to be entitled

An act relating to police, fire, and search and rescue dogs and police horses; amending s. 843.19, F.S.; revising the defined terms "police dog" to "police canine," "fire dog" to "fire canine," and "SAR dog" to "SAR canine"; increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines or horses, fire canines, or SAR canines; amending s. 767.16, F.S.; revising the term "dog" to "canine" to conform to changes made by the act; amending s. 921.0022, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 843.19, Florida Statutes, is amended to read:

843.19 Offenses against police canines ~~dogs~~, fire canines ~~dogs~~, SAR canines ~~dogs~~, or police horses.—

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

(a) "Police canine ~~dog~~" means any canine ~~dog~~, and "police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

(b) "Fire canine ~~dog~~" means any canine ~~dog~~ that is owned, or the service of which is employed, by a fire department, a

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special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires.

(c) "SAR canine ~~dog~~" means any search and rescue canine ~~dog~~ that is owned, or the service of which is employed ~~utilized~~, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

(2) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse while the animal is in the performance of its duties commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) A person convicted of an offense under this section

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shall make restitution for injuries caused to the police canine  
~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse and shall  
 pay the replacement cost of the animal if, as a result of the  
 offense, the animal can no longer perform its duties.

Section 2. Subsection (1) of section 767.16, Florida  
 Statutes, is amended to read:

767.16 Police canine or service dog; exemption.—

(1) Any canine ~~dog~~ that is owned, or the service of which  
 is employed, by a law enforcement agency, is exempt from this  
 part.

Section 3. Paragraph (c) of subsection (3) of section  
 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking  
 chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.

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79	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
80	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
81	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
82	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
83	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
84	327.35(2)(b)	3rd	Felony BUI.
85	328.05(2)	3rd	Possess, sell, or

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counterfeit fictitious,  
stolen, or fraudulent  
titles or bills of sale of  
vessels.

86

328.07(4)

3rd

Manufacture, exchange, or  
possess vessel with  
counterfeit or wrong ID  
number.

87

376.302(5)

3rd

Fraud related to  
reimbursement for cleanup  
expenses under the Inland  
Protection Trust Fund.

88

379.2431

3rd

(1) (e) 5.

Taking, disturbing,  
mutilating, destroying,  
causing to be destroyed,  
transferring, selling,  
offering to sell,  
molesting, or harassing  
marine turtles, marine  
turtle eggs, or marine  
turtle nests in violation  
of the Marine Turtle  
Protection Act.

89

379.2431

3rd

(1) (e) 6.

Possessing any marine  
turtle species or

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hatchling, or parts  
thereof, or the nest of any  
marine turtle species  
described in the Marine  
Turtle Protection Act.

90

379.2431

3rd

(1) (e) 7.

Soliciting to commit or  
conspiring to commit a  
violation of the Marine  
Turtle Protection Act.

91

400.9935(4) (a)

3rd

or (b)

Operating a clinic, or  
offering services requiring  
licensure, without a  
license.

92

400.9935(4) (e)

3rd

Filing a false license  
application or other  
required information or  
failing to report  
information.

93

440.1051(3)

3rd

False report of workers'  
compensation fraud or  
retaliation for making such  
a report.

94

501.001(2) (b)

2nd

Tampers with a consumer  
product or the container

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			using materially false/misleading information.	
95				
	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.	
96				
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.	
97				
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.	
98				
	697.08	3rd	Equity skimming.	
99				
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.	
100				
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	
101				
	806.10(2)	3rd	Interferes with or assaults	

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

	591-02307A-19		201996c1	
			firefighter in performance of duty.	
102				
	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	
103				
	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	
104				
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.	
105				
	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.	
106				
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.	
107				
	817.233	3rd	Burning to defraud insurer.	
108				
	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor	

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



	591-02307A-19		201996c1
			vehicle accidents.
109	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
110	817.236	3rd	Filing a false motor vehicle insurance application.
111	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
112	817.413(2)	3rd	Sale of used goods as new.
113	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
114	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
115	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.

Page 9 of 13

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

	591-02307A-19		201996c1
116	843.19	<u>2nd</u> <del>3rd</del>	Injure, disable, or kill police, <u>fire</u> , or <u>SAR canine</u> <del>dog</del> or <u>police</u> horse.
117	860.15(3)	3rd	Overcharging for repairs and parts.
118	870.01(2)	3rd	Riot; inciting or encouraging.
119	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
120	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
121			

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

	591-02307A-19		201996c1
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
122			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
123			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
124			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
125			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

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

	591-02307A-19		201996c1
126	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
127			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
128			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
129			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
130			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a

Page 12 of 13

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

591-02307A-19

201996c1

controlled substance for a  
fictitious person.

131

893.13(8)(a)4.

3rd

Write a prescription for a  
controlled substance for a  
patient, other person, or  
an animal if the sole  
purpose of writing the  
prescription is a monetary  
benefit for the  
practitioner.

132

918.13(1)(a)

3rd

Alter, destroy, or conceal  
investigation evidence.

133

944.47

3rd

Introduce contraband to  
correctional facility.

(1)(a)1. &amp; 2.

134

944.47(1)(c)

2nd

Possess contraband while  
upon the grounds of a  
correctional institution.

135

985.721

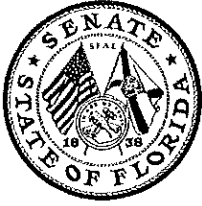
3rd

Escapes from a juvenile  
facility (secure detention  
or residential commitment  
facility).

136

137

Section 4. This act shall take effect October 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 13, 2019

---

I respectfully request that **Senate Bill # 96**, relating to Police, Fire, and Search and Rescue Dogs and Police Horses, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

3/21/19

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

96

*Meeting Date**Bill Number (if applicable)*Topic Police, Fire, and Search and Rescue Dogs and Police Horses*Amendment Barcode (if applicable)*Name Chief Gary HesterJob Title Government AffairsAddress 2636 Mitcham DrivePhone 850-219-3631*Street*TallahasseeFL32308Email ghester@fpca.com*City**State**Zip*Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
*(The Chair will read this information into the record.)*Representing Florida Police Chiefs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-21-19

Meeting Date

96

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

City

State

Zip

Email JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/19

Meeting Date

96

Bill Number (if applicable)

Topic Police/Fire/S&R Dogs

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Major - Government Affairs

Address GCSO  
Street

Phone 251-0792

Quincy FL  
City State Zip

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Gadsden County Sheriff's Office

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)

**APPEARANCE RECORD**

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

3/21/19

Meeting Date

96

Bill Number (if applicable)

Topic Police, Fire, Search & Rescue Dogs & Police horses Amendment Barcode (if applicable)Name TRAVIS MOORE

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

Address P.O. Box 2020  
StreetPhone 727.421.6902St. Pete FL 33731  
City State ZipEmail travis@moore-relations.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Animal Legal Defense FundAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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**

3/21/2019

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

96

*Meeting Date*

*Bill Number (if applicable)*

Topic Police and Fire Dogs

*Amendment Barcode (if applicable)*

Name Jim Tolley

Job Title President

Address 343 West Madison Street

Phone 850-224-7333

*Street*  
Tallahassee  
*City*

FL  
*State*

32301  
*Zip*

Email jimt@fpfp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

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)



## 2019 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Department of Corrections

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	SB 96
<b>BILL TITLE:</b>	Police, Fire, and Search and Rescue Dogs
<b>BILL SPONSOR:</b>	Senator Bean
<b>EFFECTIVE DATE:</b>	October 1, 2019

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Criminal Justice
2) Judiciary
3) Rules
4)
5)

<b><u>CURRENT COMMITTEE</u></b>

<b><u>SIMILAR BILLS</u></b>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<b><u>PREVIOUS LEGISLATION</u></b>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	HB 67
<b>SPONSOR:</b>	Reps. Tomkow; Byrd

<b>Is this bill part of an agency package?</b>
No

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	January 29, 2019
<b>LEAD AGENCY ANALYST:</b>	Jeff Bryan, Lee Adams
<b>ADDITIONAL ANALYST(S):</b>	Wes Kirkland, Jami Dunsford Sibyle Walker
<b>LEGAL ANALYST:</b>	Ryan Padgett
<b>FISCAL ANALYST:</b>	Emma Dugger

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

The bill, entitled “An act relating police, fire, and search and rescue dogs”, amends s. 843.19, F.S.

The bill enhances the current third-degree felony offense to a second-degree felony offense for intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines, fire canines, or search and rescue canines.

It remains a third-degree felony offense for intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police horse.

The bill is effective October 1, 2019.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

##### Section 843.19, Florida Statutes

The animals are currently labeled and defined in s. 843.19, F.S., as follows:

- “Police dog” means any dog, and “police horse” means any horse, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.
- “Fire dog” means any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires.
- “SAR dog” means any search and rescue dog that is owned, or the service of which is utilized, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

The penalties for committing an offense against either a Police/Fire/SAR dog or a police horse are equally felonies of the third degree.

##### Florida Department of Corrections

The Department of Corrections (FDC or Department) employs canines for two separate and distinct purposes, contraband interdiction and canine tracking.

The contraband interdiction dogs are certified narcotic, cell phone, or munitions detection canines owned by the FDC who are assigned to an interdiction operation intended to prevent, investigate, and/or gather intelligence regarding the introduction of contraband into FDC facilities and onto FDC property.

The canine tracking team dogs assist their FDC assigned handler for purposes of escape/recapture of FDC inmates as well as to assist law enforcement agencies (when requested) with felon apprehension, missing children, and to find and provide aid to people in distress.

Over the last three fiscal years, the Department has had no occurrences of our canines being involved in an incident which meets the standards contained within the bill.

The Department’s Bureau of Research and Data Analysis provided the following 3-year totals of inmates/offenders sentenced to the Department’s custody for this type of offense:

<b>843.19. F.S. – Offenses Against Police Dogs, Fire Dogs, SAR Dogs, or Police Horses</b>				
	<b>Prison Admissions</b>		<b>Supervision Admissions</b>	
	<b>Primary Offense</b>	<b>Secondary Offense</b>	<b>Primary Offense</b>	<b>Secondary Offense</b>
<b>FY 2017-18</b>	0	0	2	3
<b>FY 2016-17</b>	1	3	2	2
<b>FY 2015-16</b>	0	5	1	5

<b>Total</b>	<b>1</b>	<b>8</b>	<b>5</b>	<b>10</b>
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## 2. EFFECT OF THE BILL:

### Section 1 (lines 16 - 65): Amends s. 843.19, F.S.

The defined terms are revised from “police dog” to “police canine”, “fire dog” to “fire canine”, and “SAR dog” to “SAR canine” and these references are revised throughout the statute.

**Lines 21 – 38:** The bill specifically addresses those canines owned or in the service of several types of agencies, such as “law enforcement agency”, “fire department”, “special fire district”, and the “State Fire Marshal”. “Law enforcement agency” is not defined nor is it clear as to intent of inclusion. Within s.112.532, F.S., law enforcement officers’ and correctional officers’ rights, the statute goes to the point of referencing each distinctly, i.e. law enforcement agency and a correctional agency. Although the FDC has canines performing the duties in question, it is unclear as to whether this statute would fully cover all our canines in the case of an offense committed against one of them. For instance, our contraband interdiction canines serve the purpose, like a “police canine”, of aiding our staff in the detection of criminal activity, i.e. the introduction of drugs, cellphones, etc. into a correctional institution. These canines are not owned nor are they working in the assistance of one of the types of agencies specified while in performance of these tasks. However, our Canine Tracking Teams are performing the duties, like a “SAR canine”, of aiding in the location of escapees and other missing or endangered persons through mutual aid agreements the FDC has with law enforcement partner agencies. It could be interpreted that these Canine Tracking canines are covered by this statute as opposed to the contraband interdiction canines.

Clarifying intent within the bill would ensure inclusion of all FDC canines under the scope of proposed legislation by adding a “corrections agency” or “criminal justice agency” to the types of agencies designated.

**Lines 39 – 49:** The bill increases from a third to a second-degree felony the crime of intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon a police, fire, or search and rescue canine. The same offense committed against a police horse remains a third-degree felony. Both offenses remain in severity level three under s.921.0022, F.S., so the minimum sentence required under the Criminal Punishment Code will not increase, although the sentence imposed could be greater due to the enhanced felony degree. Due to the small number of prison commitments for this offense, the impact on the prison system will be insignificant.

**Section 2 (lines 66 - 134):** Amends Paragraph (c) of subsection (3) of s. 921.0022, F.S., to the split and denote the two offenses as separate offenses on the Offense Severity Chart.

**Section 3 (line 135):** The bill provides an effective date of October 1, 2019.

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

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

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

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

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

Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

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

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

## FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y ☐ N ☒

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

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?** Y ☒ N ☐

Revenues:	
Expenditures:	The fiscal impact is indeterminate right now. However, the final impact will be determined by the Criminal Justice Impact Conference.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

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

Revenues:	
Expenditures:	
Other:	

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

If yes, explain impact.	
Bill Section Number:	

## TECHNOLOGY IMPACT

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

If yes, describe the anticipated impact to the agency including any fiscal impact.

There will be a minimal technology impact due to programming changes to add new felonies to existing offense codes in OBIS.

## FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.

N/A

## ADDITIONAL COMMENTS

N/A

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

N/A

**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 310

INTRODUCER: Senator Perry

SUBJECT: Off-highway Vehicles

DATE: March 20, 2019

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Akhavein	Becker	AG	<b>Favorable</b>
2. Osborne	Yeatman	CA	<b>Favorable</b>
3. Akhavein	Phelps	RC	<b>Favorable</b>

---

**I. Summary:**

SB 310 redefines the terms “ATV” (all-terrain vehicle) and “ROV” (recreational off-highway vehicle) to increase the width and dry weight allowed for these vehicles. This change will allow manufacturers to meet increasing consumer and regulatory demands for safer vehicles.

**II. Present Situation:**

The 2002 Legislature found that off-highway vehicles were becoming increasingly popular in this state and that the use of these vehicles should be controlled and managed to minimize negative effects on the environment, wildlife habitats, native wildlife, and native flora and fauna.<sup>1</sup> The T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act<sup>2</sup> was passed to develop an Off-Highway Vehicle recreational system. The program provides a set of guidelines to follow for developing and maintaining state lands, as well as provides restrictions on vehicles allowed on authorized state lands.

The definitions of ATV and ROV are distinguished by width, weight, and the number of non-highway wheels. Consumers and regulators have requested safer, more comfortable, and better performing vehicles. Authorizing a wider footprint of the vehicle will allow a lower center of gravity, which greatly decreases the possibility of a rollover. Authorizing an increased weight allowance will allow wider axels, heavier roll protection, and better engine performance.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 261.03, F.S., to revise the definitions of “ATV” and “ROV” to increase the authorized width and dry weight of the vehicles.

---

<sup>1</sup> Section 261.02(1), F.S.

<sup>2</sup> Section 261.01, F.S.



**Section 2** amends s. 316.2074, F.S., to revise the definition of “all-terrain vehicle” to increase the authorized width and dry weight of the vehicle.

**Section 3** amends s. 317.0003, F.S., to revise the definitions of “ATV” and “ROV” to increase the authorized width and dry weight of the vehicles.

**Section 4** reenacts s. 316.2123(1), F.S., relating to the operation of an ATV on certain roadways.

**Section 5** reenacts s. 316.21265(1), F.S., relating to the use of certain vehicles by law enforcement agencies.

**Section 6** provides that this act shall take effect July 1, 2019.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes provided by the bill will allow manufacturers to build safer, more comfortable and better performing vehicles.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 261.03, 316.2074, and 317.0003

This bill reenacts the following sections of the Florida Statutes: 316.2123 and 316.21265

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

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

None.

**B. Amendments:**

None.

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

---

By Senator Perry

8-00471B-19

2019310\_\_

A bill to be entitled

An act relating to off-highway vehicles; amending ss. 261.03 and 317.0003, F.S.; redefining the terms "ATV" and "ROV" to increase the authorized width and dry weight of such vehicles; amending s. 316.2074, F.S.; redefining the term "all-terrain vehicle" to increase the authorized width and dry weight of the vehicle; reenacting s. 316.2123(1), F.S., relating to the operation of an ATV on certain roadways; reenacting s. 316.21265(1), F.S., relating to the use of certain vehicles by law enforcement agencies; providing an effective date.

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

Section 1. Subsections (2) and (8) of section 261.03, Florida Statutes, are amended to read:

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

(2) "ATV" means any motorized off-highway or all-terrain vehicle 55 50 inches or less in width which has, having a dry weight of 1,500 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons.

(8) "ROV" means any motorized recreational off-highway vehicle 80 65 inches or less in width which has, having a dry weight of 2,500 2,000 pounds or less, is designed to travel on four or more nonhighway tires, and is manufactured for recreational use by one or more persons. The term "~~ROV~~" does not include a golf cart as defined in ss. 316.003 and 320.01 or a

Page 1 of 3

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

8-00471B-19

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low-speed vehicle as defined in s. 320.01.

Section 2. Subsection (2) of section 316.2074, Florida Statutes, is amended to read:

316.2074 All-terrain vehicles.—

(2) As used in this section, the term "all-terrain vehicle" means any motorized off-highway vehicle 55 50 inches or less in width which has, having a dry weight of 1,500 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons. For the purposes of this section, "all-terrain vehicle" also includes a "two-rider ATV" as defined in s. 317.0003.

Section 3. Subsections (1) and (9) of section 317.0003, Florida Statutes, are amended to read:

317.0003 Definitions.—As used in this chapter, the term:

(1) "ATV" means any motorized off-highway or all-terrain vehicle 55 50 inches or less in width which has, having a dry weight of 1,500 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons.

(9) "ROV" means any motorized recreational off-highway vehicle 80 65 inches or less in width which has, having a dry weight of 2,500 2,000 pounds or less, is designed to travel on four or more nonhighway tires, and is manufactured for recreational use by one or more persons. The term "~~ROV~~" does not include a golf cart as defined in ss. 316.003 and 320.01 or a low-speed vehicle as defined in s. 320.01.

Section 4. For the purpose of incorporating the amendment made by this act to section 317.0003, Florida Statutes, in a reference thereto, subsection (1) of section 316.2123, Florida

Page 2 of 3

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

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Statutes, is reenacted to read:

316.2123 Operation of an ATV on certain roadways.—

(1) The operation of an ATV, as defined in s. 317.0003, upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour.

Section 5. For the purpose of incorporating the amendment made by this act to section 316.2074, Florida Statutes, in a reference thereto, subsection (1) of section 316.21265, Florida Statutes, is reenacted to read:

316.21265 Use of all-terrain vehicles, golf carts, low-speed vehicles, or utility vehicles by law enforcement agencies.—

(1) Notwithstanding any provision of law to the contrary, any law enforcement agency in this state may operate all-terrain vehicles as defined in s. 316.2074, golf carts as defined in s. 320.01, low-speed vehicles as defined in s. 320.01, or utility vehicles as defined in s. 320.01 on any street, road, or highway in this state while carrying out its official duties.

Section 6. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 6, 2019

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I respectfully request that **Senate Bill #310**, relating to Off-Highway Vehicles, be placed on the:

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

*W. Keith Perry*

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Senator Keith Perry  
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-19

Meeting Date

SB 310

Bill Number (if applicable)

Topic OFF HIGHWAY VEHICLES

Amendment Barcode (if applicable)

Name STEVE DYAL

Job Title

Address 9410 HAWKS NEST LN

Phone 850-570-6286

Street

TALLAHASSEE FL

32309

Email SDYAL@DYALCONSULTING.COM

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing POLARIS

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 462

INTRODUCER: Rules Committee, Community Affairs Committee; Judiciary Committee; and Senator Powell

SUBJECT: Judicial Process

DATE: March 21, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	<b>Fav/CS</b>
2.	Peacock	Yeatman	CA	<b>Fav/CS</b>
3.	Cibula	Phelps	RC	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 462 amends statutes relating to notices of lis pendens and service of process, which are judicial processes governed by ch. 48, F.S.

The changes to the lis pendens statute clarify how long a notice of lis pendens bars the enforcement of liens or other interests on a property that is sold in a judicial sale. As clarified, a notice of lis pendens bars the enforcement of liens or other interests on the property until the instrument transferring title to the property is recorded. This change is a response to a recent appellate court opinion that could be read to make a purchaser of property at a foreclosure sale responsible for liens recorded on the property after the sale but before the new title is recorded.

The changes to the statutes regulating service of process allow:

- A certified process server to serve, with respect to civil process, any nonenforceable civil process.
- A process server to serve the spouse of the person to be served in any county of the state, not just the county of their shared residence.
- A process server to serve a limited liability company at additional types of addresses used as a business address, including the address of a virtual office, executive office, or mini suite.
- Any process server to electronically sign return-of-service forms that document the date and time of service, which is a convenience currently reserved for process servers employed by a sheriff.

- The attachment of dark window tinting material to the side and back windows of a vehicle owned or leased by a certified process server.

## II. Present Situation:

A notice of lis pendens,<sup>1</sup> upon recording in the official records of the county, provides notice that a property is the subject of litigation. The notice essentially warns parties who are not involved in the litigation, such as subsequent purchasers or encumbrancers, that any interest they acquire in the property while the litigation is pending may be adversely affected by the outcome of the case.<sup>2</sup> In other words, the notice of lis pendens helps potential purchasers or encumbrancers of a property avoid becoming embroiled in the dispute, and protects the plaintiff from intervening liens and interests that would impair any property rights claimed.<sup>3</sup>

### The Lis Pendens Statute

The lis pendens statute provides, in part, that “[a]n action in any of the state or federal courts in this state operates as a lis pendens on any real or personal property involved therein or to be affected thereby *only if a notice of lis pendens is recorded in the official records of the county where the property is located . . .*”<sup>4</sup>

The notice of lis pendens must contain the following:

- The names of the parties to the lawsuit.
- The date that the lawsuit was filed, the date of the clerk’s electronic receipt, or the case number of the lawsuit.
- The name of the court in which the suit is pending.
- A description of the property involved or to be affected.
- A statement of the relief sought as to the property.<sup>5</sup>

Once a lis pendens is filed, a holder of an unrecorded interest or lien who fails to timely intervene in the proceedings may lose the right to those interests as noted in s. 48.23(1)(d), F.S., that provides, in part:

[T]he recording of such notice of lis pendens . . . constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and *if such proceedings are prosecuted to a judicial sale of the*

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<sup>1</sup> “Lis pendens” is Latin for a pending lawsuit. BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>2</sup> *Chiusolo v. Kennedy*, 614 So. 2d 491, 492 (Fla. 1993).

<sup>3</sup> *Id.* at n. 1. (Thus, lis pendens exists at least in part to prevent third-party purchasers from “buying” a lawsuit when they purchase the property.)

<sup>4</sup> Section 48.23(1)(a), F.S. The current statutory scheme regulating the procedural requirements and effect of notices of lis pendens has its origins in common law.

<sup>5</sup> Section 48.23(1)(c), F.S.



*property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens . . .*

## **The Ober Opinions**

### ***Ober I, the Withdrawn Opinion***

On August 24, 2016, the Fourth District Court of Appeal issued an opinion in *Ober v. Town of Lauderdale-by-the-Sea*, which was later withdrawn and replaced with a substitute opinion.<sup>6</sup> The issue in the opinions required the court to interpret the meaning of the foregoing portions of the lis pendens statute. Specifically, the court sought to determine whether the statute bars the enforcement of liens recorded after a final judgment of foreclosure but before a judicial sale of the property.

Under the facts of the case, a bank recorded a notice of lis pendens on a property as part of a foreclosure proceeding that it initiated on November 26, 2007. Nearly a year later, on September 22, 2008, the bank obtained a foreclosure judgment on the property. Then, between July 13, 2009, and October 27, 2011, the Town of Lauderdale-by-the-Sea recorded seven code enforcement liens. Finally, the property was sold at a judicial sale to James Ober on September 27, 2012, more than 4 years after the foreclosure judgment. After purchasing the property, Mr. Ober filed suit to quiet title and the town counterclaimed to foreclose on its liens.

In its first *Ober* decision, the district court recognized that the lis pendens statute “does not provide an end date for the lis pendens.”<sup>7</sup> Then the court sought to identify an end date to “avoid the absurd result of a lis pendens precluding any lien from ever being placed on the property in perpetuity.”

Upon reviewing the portion of the lis pendens statute which states, “[a]n action in any of the state or federal courts in this state operates as a lis pendens . . . only if a notice of lis pendens is recorded,”<sup>8</sup> the *Ober I* court declared that the

plain meaning of [the] provision indicates that the action itself is the actual lis pendens, which takes effect if and when a notice is filed. The lis pendens therefore logically must terminate along with the action. The “action” in this case was the foreclosure action initiated by the non-party bank, which terminated thirty days after the court’s issuance of a final judgment.<sup>9</sup>

The *Ober I* court ultimately held that “a lis pendens bars liens only through final judgment, and does not affect the validity of liens after that date, even if they are before the actual sale of the property.”<sup>10</sup> The court went on to state that the *Ober I* “case appears to reveal a misstatement of the law” in the Final Judgment of Foreclosure form incorporated into the Florida Rules of Civil

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<sup>6</sup> *Ober v. Town of Lauderdale-by-the-Sea* No. 4D14-4597 (Fla. 4th DCA 2016), opinion withdrawn and superseded on reh’g., 218 So. 3d 952 (Fla. 4th DCA 2017). The withdrawn opinion is no longer available on Westlaw, but it is available without reference, pages, or volume numbers at findlaw.com at <http://caselaw.findlaw.com/fl-district-court-of-appeal/1746796.html>.

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

<sup>8</sup> Section 48.23(1)(a), F.S.

<sup>9</sup> See *Ober I*, *supra* note 6.

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

Procedure. The form, according to the *Ober I* court, incorrectly suggests that “all liens from the filing of the lis pendens until the certificate of sale<sup>11</sup> is filed are discharged.”

### ***Ober II, the Substitute Opinion***

The Fourth District Court of Appeal’s first *Ober* opinion “shocked the mortgage lending community by holding that the protections traditionally afforded by the recordation of a lis pendens terminated 30 days after the entry of final judgment of foreclosure even when the sale had not yet occurred.”<sup>12</sup> The opinion, going against the traditional understanding of the statute, was expected to disrupt the sale of title insurance, the real estate market, and reduce bids on properties at foreclosure sales, which would result in more foreclosed property owners facing liability for deficiency judgments.<sup>13</sup>

However, the court granted Ober’s motion for rehearing and issued a substitute opinion, essentially reversing its initial opinion.<sup>14</sup> In the substitute opinion, the *Ober II* court stated:

We reject the Town’s argument that the statute applies only to liens existing or accruing prior to the date of the final judgment. The language of the statute is broad, applying to “all interests and liens.” Significantly, the statute expressly contemplates that its preclusive operation continues through a “judicial sale.” This is consistent with how foreclosure suits operate in the real world.<sup>15</sup>

The *Ober II* court’s opinion also indicates that several groups that are active participants in real estate transactions filed amicus briefs in opposition to the court’s initial decision. The Florida Bankers Association advised the court that foreclosure suits are “unlike many civil lawsuits in that ‘much remains to be accomplished after entry of final judgment, including the foreclosure sale, the issuance of certificates of sale and title, and, in many instances, the prosecution of a deficiency claim, all under court supervision.’”<sup>16</sup> The court also noted that the Business Law Section of The Florida Bar explained that the statement of law in the Final Judgment of Foreclosure form, which the court previously criticized, “reflects the common understanding of the operation of the lis pendens statute.”<sup>17</sup>

In concluding its substitute opinion, the *Ober II* court recognized that precluding the enforcement of local code enforcement liens between a final judgment of foreclosure and the judicial sale of a foreclosed property presents the practical problem of collecting fines for code violations. This problem, according to the court, is in the province of the Legislature.<sup>18</sup>

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<sup>11</sup> A certificate of sale is a document that the clerk of court will file and serve on the affected parties after the judicial sale of the property. The certificate will identify when notices of the sale were published in a newspaper and identify the purchaser and the amount paid for the property. Afterwards, the clerk will record a certificate of title transferring title of the property to the purchaser. Section 45.031(4) and (6), F.S.

<sup>12</sup> Lauren Reynolds, *The Resurrection of Lis Pendens: Ober Reversed on Rehearing*, 20 No. 17 CONSUMER FIN. SERVICES L. REP. 26 (Feb. 28, 2017).

<sup>13</sup> *Id.*

<sup>14</sup> *Ober v. Town of Lauderdale-by-the-Sea*, 218 So. 3d 952 (Fla. 4th DCA 2017), *cert. denied*, 2017 WL 3883662 (Fla. 2017).

<sup>15</sup> *Id.* at 954.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.* at 954-55.

## Real Property Probate & Trust Law Section of The Florida Bar

Although, the Fourth District Court of Appeal reversed itself, the Real Property, Probate, and Trust Law Section of The Florida Bar is pursuing legislative changes to the lis pendens statute.<sup>19</sup> The wording of the court's substitute opinion in *Ober II* described the preclusive effect of a notice of lis pendens as continuing "through a 'judicial sale.'"<sup>20</sup> As such, the court may have inadvertently created a gap between a judicial sale and the recording of a certificate of title during which liens may attach to a foreclosed property. This gap, in some cases, may last "days, weeks, or months."<sup>21</sup>

Accordingly, the changes pursued by the bar Section are intended to "preserve the widely understood interpretation of the statute, that . . . a lis pendens remains in effect through the recording of an instrument transferring title pursuant to a judicial sale."<sup>22</sup> This change will "provide the purchaser [of foreclosed property] with title free and clear of intervening subordinate interests or liens."<sup>23</sup>

## Service of Process

Service of process involves the delivery of papers such as pleadings, complaints, and subpoenas in connection with judicial proceedings. These documents must be delivered by a process server who is disinterested in the outcome of the case. There are four types of individuals who are authorized to serve process: sheriffs' officers, special process servers, certified process servers, and those authorized to serve civil witness subpoenas under the rules of civil procedure.<sup>24</sup> Certified process servers may serve "initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses."<sup>25</sup>

Typically, personal service is accomplished by personal delivery of the process to its intended recipient.<sup>26</sup> In some cases, however, the statutes allow for service on others in place of the intended recipient. For example, process may be made on the intended recipient's spouse "if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling."<sup>27</sup>

Substitute service is also allowed if the only address discoverable through public records for the person to be served is a private mailbox, a virtual office, or an executive office or mini suite.<sup>28</sup> In

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<sup>19</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposal to Amend Section 48.23, Fla. Stat. (Lis Pendens)* (Oct. 10, 2017) (On file with the Senate Committee on Judiciary).

<sup>20</sup> *Ober*, 218 So. 3d at 954.

<sup>21</sup> Real Property, Probate and Trust Law Section, *supra* note 19.

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

<sup>23</sup> *Id.*

<sup>24</sup> See ss. 48.021(1), 48.27, F.S., and Fla.R.Civ.P. 1.070.

<sup>25</sup> Sections 48.021(1) and 48.27(2), F.S.

<sup>26</sup> Section 48.031(1)(a), F.S.

<sup>27</sup> Section 48.031(2)(a), F.S.

<sup>28</sup> Section 48.031(6)(a), F.S. A virtual office is "an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space, and where all communications are routed through a common receptionist." Section 48.031(6)(b), F.S. An executive office or mini suite is "an office that provides

these instances, substitute service may be made by leaving a copy of the process with the person in charge of the facility.

Similarly, service may be made on a limited liability company by serving the process on its registered agent.<sup>29</sup> The agent's business address for service of process must be the same as the agent's registered office, but this address may be a residence or a private mailbox.<sup>30</sup>

When a process server serves process, the process server must place "on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process."<sup>31</sup> The process server must also sign a return-of-service form identifying all the initial pleadings delivered and served with the process. If the process server is employed by a sheriff, he or she may sign the form with an electronic signature.<sup>32</sup> The person who requested service or the person authorized to serve the process must file the form with the court.<sup>33</sup>

When service of process must be made on a person who is outside this state, the statutes state that the process "shall be made . . . by any officer authorized to serve process in the state where the person is served."<sup>34</sup> The statutes further provide that the officer's affidavit, which identifies the time, manner, and place of service, should be filed with the court.

### **Motor Vehicle Sunscreening Material**

Sections 316.2951 – 316.2956, F.S., prohibit certain sunscreening material<sup>35</sup> from being attached to the windshield and windows of motor vehicles operated on public highways, roads, and streets. Individuals are permitted to attach sunscreening material to "a strip at the top of a windshield, so long as such material is transparent and does not encroach upon the driver's direct forward viewing area."<sup>36</sup> Generally, sunscreening material may not be attached to any side windows or windows behind the driver if the material "has the effect of making the window nontransparent or would alter the window's color, increase its reflectivity, or reduce its light transmittance..."<sup>37</sup>

Section 316.29545, F.S., requires the Department of Highway Safety and Motor Vehicles to exempt law enforcement vehicles used in undercover or canine operations and individuals with certain medical conditions from the window sunscreening limitations in ss. 316.2951-316.2957, F.S. This section also exempts vehicles that are owned or leased by private investigators or

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communications services, such as telephone and facsimile services, a dedicated office space, and other supportive services, and where all communications are routed through a common receptionist." *Id.*

<sup>29</sup> Section 48.062, F.S.

<sup>30</sup> Sections 605.0113(1)(a) and 48.062(4), F.S.

<sup>31</sup> Section 48.031(5), F.S.

<sup>32</sup> Section 48.21(1), F.S.

<sup>33</sup> Section 48.031(5), F.S.

<sup>34</sup> Section 48.194(1), F.S.

<sup>35</sup> "Sunscreening material" is a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effect of the sun with respect to light reflectance or transmittance. *See* s. 316.2951(4), F.S.

<sup>36</sup> Section 316.2952(2)(b), F.S.

<sup>37</sup> Sections 316.2953 and 316.2954, F.S.

private investigative agencies licensed under ch. 493, F.S., from the window sunscreening limitations under ss. 316.2953, 316.2954, and 316.2956.

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

#### **Notices of Lis Pendens**

A notice of lis pendens is notice recorded in the official records of a county warning that the outcome of litigation involving the property may affect the interests of future purchasers or encumbrancers, such as those who may enforce a lien against the property. This bill clarifies that a notice of lis pendens precludes the enforcement of liens or other interests against a foreclosed property until the instrument transferring title to the property is recorded. This clarification to the lis pendens statute, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is consistent with “the long established and accepted understanding of the lis pendens statute.”<sup>38</sup>

The bill is a response to a 2017 appellate court opinion<sup>39</sup> interpreting the current lis pendens statute. Due to its particular wording, the opinion could be read to allow liens to be enforced against a foreclosed property after the property is sold at a judicial sale but before the date the title is recorded.

The bill declares that, because of its clarifying nature, the changes to the lis pendens statute apply to actions pending on its effective date.<sup>40</sup>

#### **Service of Process**

This bill allows certified process servers to serve a wider variety of process. Under current law, these process servers, with respect to civil process, may serve only the initial nonenforceable civil process. Under the bill, they may serve any nonenforceable civil process.

The bill also allows for substituted service on a spouse in any county, not just the county of residence of the spouse and person to be served as provided in current law.

Under the bill, a limited liability company may be served at additional types of business addresses. Existing law contemplates that a limited liability company will be served at the address for a registered agent or a member or manager if the address is a private mailbox or

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<sup>38</sup> See *supra*, note 19.

<sup>39</sup> See *supra*, note 14.

<sup>40</sup> Courts presume that when the Legislature amends a statute, a change in the meaning of the statute is intended. *Hill v. State*, 143 So. 3d 981, 986 (Fla. 4th DCA 2014) However, courts also “recognize that, at times, a mere change in the language of a statute ‘does not necessarily indicate an intent to change the law’ because the intent may be to clarify what was doubtful and to erase misapprehension as to existing law.” *Id.* (quoting *State ex rel. Szabo Food Servs., Inc. of N.C. v. Dickinson*, 286 So. 2d 529, 531 (Fla.1973)). Similarly, “if the Legislature amends a statute shortly after a controversy arises with respect to the interpretation of the statute, then the amendment may be considered to be a legislative interpretation of the original statute rather than a substantive change to the statute.” *Leftwich v. Florida Dept. of Corr.*, 148 So. 3d 79, 83 (Fla. 2014) (citing *Lowry v. Parole & Prob. Comm’n*, 473 So. 2d 1248, 1250 (Fla. 1985)). Accordingly, these interpretive principles support the assertion in the bill that it clarifies existing law and that the bill may apply to pending actions without violating the constitutional restrictions on retroactive laws.

home. The bill allows a limited liability company to also be served at a virtual office, executive office, or mini suite.

The bill allows out-of-state service of process to be made by any person authorized to serve process in that state. In contrast, current law requires that out-of-state service of process be made by an officer authorized to serve process in the state.

Under the bill, any process server may sign return-of-service forms with an electronic signature. Under current law, this convenience is reserved for process servers employed by a sheriff. Regardless of the type of signature on a return-of-service form, the bill requires that the form list all pleadings and documents served.

Finally, the bill adds vehicles that are owned or leased by certified process servers to the window sunscreening exemption under s. 316.2956(3), F.S., allowing specified individuals to apply dark window tint to the side and back windows of their motor vehicle. Currently, only vehicles used by private investigators, those with a medical exemption, and law enforcement agencies may use dark window tinting.

#### **Effective Date**

The bill takes effect upon becoming a law.

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

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

Because the bill clarifies existing law, it likely does not constitute a mandate subject to the requirements of article VII, section 18 of the Florida Constitution. However, if the changes to the lis pendens statute can properly be viewed as a limit on the authority of a local government to raise revenue by limiting the enforcement of code violations, the bill must be approved by a two-thirds vote of each house of the Legislature.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

By precluding the enforcement of liens or other interests to a foreclosed property between the judicial sale and the transfer of title to the new purchaser, the bill may simplify or prevent complications in the completion of real estate transactions.

**C. Government Sector Impact:**

This bill may limit the ability of local governments to collect fines for code violations by ensuring that local governments cannot enforce a lien against a foreclosed property between the date of the foreclosure sale and the date the title to the property is transferred to the purchaser.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 48.021, 48.031, 48.062, 48.194, 48.21, 48.23, and 316.29545.

**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 March 21, 2019:**

The committee substitute includes a minor change to s. 48.23(1)(d), F.S., which recognizes that intervention in a lawsuit must be granted by a court. The committee substitute also requires return-of-service forms to list all documents served.

**CS/CS by Community Affairs on March 5, 2019:**

The committee substitute amends s. 316.29545, F.S., to exempt certified process servers from certain window sunscreening restrictions.

**CS by Judiciary on February 11, 2019:**

The original bill amended a statute relating to notice of lis pendens. The committee substitute also makes changes to the statutes governing process servers and service of process.

**B. Amendments:**

None.

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

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890030

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
	.	
	.	
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The Committee on Rules (Powell) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 64 - 65  
and insert:  
of any such unrecorded interest or lien moves to intervene  
~~intervenes~~ in such proceedings within 30 days after the  
recording of the notice and the court ultimately grants the  
motion. If

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

And the title is amended as follows:



890030

12       Delete line 6  
13 and insert:  
14       in certain circumstances; revising provisions relating  
15       to time requirements for intervention in certain  
16       proceedings; specifying the effect of a



720962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
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The Committee on Rules (Powell) recommended the following:

**Senate Amendment**

Delete line 166  
and insert:  
list all pleadings and documents served and be signed by the  
person who

By the Committees on Community Affairs; and Judiciary; and  
Senator Powell

578-02721-19

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A bill to be entitled

An act relating to judicial process; amending s. 48.23, F.S.; providing that a person who acquires for value a lien on property during the course of specified legal actions takes such lien free of claims in certain circumstances; specifying the effect of a valid, recorded notice of lis pendens in certain circumstances involving a judicial sale; providing applicability; amending s. 48.021, F.S.; revising authority of special process servers; revising a cross-reference; requiring that civil witness subpoenas be served by certain persons; amending s. 48.031, F.S.; revising requirements for substituted service on the spouse of the person to be served; revising requirements for documenting service of process; conforming terminology; amending s. 48.062, F.S.; revising requirements for service on limited liability companies; amending s. 48.194, F.S.; revising provisions specifying who may serve process outside of the state; revising requirements for documenting that service has been properly made outside the state; amending s. 48.21, F.S.; revising requirements for return-of-service forms; authorizing certain persons to electronically sign return-of-service forms; amending s. 316.29545, F.S.; exempting certified process servers from certain window suncreening restrictions; providing an effective date.

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

Section 1. Paragraphs (b) and (d) of subsection (1) of section 48.23, Florida Statutes, are amended to read:

48.23 Lis pendens.—

(1)

(b)1. An action that is filed for specific performance or that is not based on a duly recorded instrument has no effect, except as between the parties to the proceeding, on the title to, or on any lien upon, the real or personal property unless a notice of lis pendens has been recorded and has not expired or been withdrawn or discharged.

2. Any person acquiring for value an interest in, or lien upon, the real or personal property during the pendency of an action described in subparagraph 1., other than a party to the proceeding or the legal successor by operation of law, or personal representative, heir, or devisee of a deceased party to the proceeding, shall take such interest or lien exempt from all claims against the property that were filed in such action by the party who failed to record a notice of lis pendens or whose notice expired or was withdrawn or discharged, and from any judgment entered in the proceeding, notwithstanding the provisions of s. 695.01, as if such person had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.

(d) Except for the interest of persons in possession or easements of use, the recording of such notice of lis pendens, provided that during the pendency of the proceeding it has not

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expired pursuant to subsection (2) or been withdrawn or discharged, constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens. A valid recorded notice of lis pendens of such proceedings prosecuted to a judicial sale remains in effect through the recording of any instrument transferring title to the property pursuant to the final judgment unless it expires, is withdrawn, or it is otherwise discharged. If the notice of lis pendens expires or is withdrawn or discharged, the expiration, withdrawal, or discharge of the notice does not affect the validity of any unrecorded interest or lien.

Section 2. The changes made by this act to s. 48.23, Florida Statutes, are intended to clarify existing law and shall apply to actions pending on the effective date of this act.

Section 3. Subsection (1) of section 48.021, Florida Statutes, is amended to read:

48.021 Process; by whom served.—

(1) All process shall be served by the sheriff of the county where the person to be served is found, except ~~initial~~ nonenforceable civil process, criminal witness subpoenas, and

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criminal summonses may be served by a special process server appointed by the sheriff as provided ~~for~~ in this section or by a certified process server as provided ~~for~~ in s. 48.27 ~~or~~ ~~48.25~~ ~~48.31~~. Civil witness subpoenas shall ~~may~~ be served by any person authorized by rules of civil procedure.

Section 4. Subsections (2) and (5) and paragraph (a) of subsection (6) of section 48.031, Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(2) (a) Substituted ~~Substitute~~ service ~~may be made~~ on the spouse of the person to be served may be made at any place in a ~~the~~ county by an individual authorized under s. 48.021 or s. 48.27 to serve process in that county, if the cause of action is not an adversarial ~~adversary~~ proceeding between the spouse and the person to be served, if the spouse requests such service or the spouse is also a party to the action, and if the spouse and person to be served reside ~~are residing~~ together in the same dwelling, regardless of whether such dwelling is located in the county where substituted service is made.

(b) Substituted ~~Substitute~~ service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two attempts to serve the owner are ~~have been~~ made at the place of business.

(5) A person serving process shall place, on the first page only of at least one of the processes served, the date and time of service, his or her initials or signature, and, if

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117 ~~applicable, his or her identification number and initials for~~  
 118 ~~all service of process. The person serving process shall list on~~  
 119 ~~the return-of-service form all initial pleadings delivered and~~  
 120 ~~served along with the process. The person requesting service or~~  
 121 ~~the person authorized to serve the process shall file the~~  
 122 ~~return-of-service form with the court.~~

123 (6) (a) If the only address for a person to be served which  
 124 is discoverable through public records is a private mailbox, a  
 125 virtual office, or an executive office or mini suite,  
 126 substituted ~~substitute~~ service may be made by leaving a copy of  
 127 the process with the person in charge of the private mailbox,  
 128 virtual office, or executive office or mini suite, but only if  
 129 the process server determines that the person to be served  
 130 maintains a mailbox, a virtual office, or an executive office or  
 131 mini suite at that location.

132 Section 5. Subsection (4) of section 48.062, Florida  
 133 Statutes, is amended to read:

134 48.062 Service on a limited liability company.—

135 (4) If the address ~~provided~~ for the registered agent,  
 136 member, or manager is a residence, a ~~or~~ private mailbox, a  
 137 virtual office, or an executive office or mini suite, service on  
 138 the domestic or foreign limited liability company, ~~domestic or~~  
 139 ~~foreign,~~ may be made by serving the registered agent, member, or  
 140 manager in accordance with s. 48.031.

141 Section 6. Subsection (1) of section 48.194, Florida  
 142 Statutes, is amended to read:

143 48.194 Personal service outside state.—

144 (1) Except as otherwise provided herein, service of process  
 145 on persons outside of this state shall be made in the same

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146 manner as service within this state by any person officer  
 147 authorized to serve process in the state where the person is  
 148 served. No order of court is required. ~~A An affidavit of the~~  
 149 ~~officer shall be filed, stating the time, manner, and place of~~  
 150 ~~service. The court may consider the return-of-service form~~  
 151 described in s. 48.21 affidavit, or any other competent  
 152 evidence, in determining whether service has been properly made.  
 153 Service of process on persons outside the United States may be  
 154 required to conform to the provisions of the Hague Convention on  
 155 the Service Abroad of Judicial and Extrajudicial Documents in  
 156 Civil or Commercial Matters.

157 Section 7. Subsection (1) of section 48.21, Florida  
 158 Statutes, is amended to read:

159 48.21 Return of execution of process.—

160 (1) Each person who effects service of process shall note  
 161 on a return-of-service form attached thereto, the date and time  
 162 when it comes to hand, the date and time when it is served, the  
 163 manner of service, the name of the person on whom it was served,  
 164 and, if the person is served in a representative capacity, the  
 165 position occupied by the person. The return-of-service form must  
 166 list all pleadings served and be signed by the person who  
 167 effects the service of process. However, a person who is  
 168 authorized under this chapter to serve process and employed by a  
 169 ~~sheriff~~ who effects such ~~the~~ service of process may sign the  
 170 return-of-service form using an electronic signature ~~certified~~  
 171 ~~by the sheriff.~~

172 Section 8. Section 316.29545, Florida Statutes, is amended  
 173 to read:

174 316.29545 Window sunscreening exclusions; medical

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exemption; certain law enforcement vehicles, process server  
vehicles, and private investigative service vehicles exempt.-

(1) The department shall issue medical exemption  
 certificates to persons who are afflicted with Lupus, any  
 autoimmune disease, or other medical conditions which require a  
 limited exposure to light, which certificates shall entitle the  
 person to whom the certificate is issued to have sunscreening  
 material on the windshield, side windows, and windows behind the  
 driver which is in violation of the requirements of ss.  
 316.2951-316.2957. The department shall consult with the Medical  
 Advisory Board established in s. 322.125 for guidance with  
 respect to the autoimmune diseases and other medical conditions  
 which shall be included on the form of the medical certificate  
 authorized by this section. At a minimum, the medical exemption  
 certificate shall include a vehicle description with the make,  
 model, year, vehicle identification number, medical exemption  
 decal number issued for the vehicle, and the name of the person  
 or persons who are the registered owners of the vehicle. A  
 medical exemption certificate shall be nontransferable and shall  
 become null and void upon the sale or transfer of the vehicle  
 identified on the certificate.

(2) The department shall exempt all law enforcement  
 vehicles used in undercover or canine operations from the window  
 sunscreening requirements of ss. 316.2951-316.2957.

(3) The department shall exempt from the window  
 sunscreening restrictions of ss. 316.2953, 316.2954, and  
 316.2956 vehicles that are owned or leased by process servers  
certified pursuant to s. 48.29 or by private investigators or  
 private investigative agencies licensed under chapter 493.

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(4) The department may charge a fee in an amount sufficient  
 to defray the expenses of issuing a medical exemption  
 certificate as described in subsection (1).

(5) The department is authorized to promulgate rules for  
 the implementation of this section.

Section 9. This act shall take effect upon becoming a law.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 5, 2019

---

I respectfully request that **Senate Bill #462**, relating to Judicial Process, be placed on the:

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

A handwritten signature in black ink, appearing to read "Bobby Powell", is written over a horizontal line.

---

Senator Bobby Powell  
Florida Senate, District 30



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

March 21, 2019

462

*Meeting Date*

*Bill Number (if applicable)*

Topic Judicial Process

*Amendment Barcode (if applicable)*

Name Brittany Finkbeiner

Job Title Attorney

Address 215 South Monroe Street, Suite 815

Phone (850) 999-4100

*Street*

Tallahassee

FL

32301

Email bfinkbeiner@deanmead.com

*City*

*State*

*Zip*

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)

3/21/14  
Meeting Date

462  
Bill Number (if applicable)

Topic Lis Pendens

Amendment Barcode (if applicable)

Name Michael Compton

Job Title Process Server

Address 224 Harvey Mill Rd  
Street

Phone 850-433-9333

Lawfordville FL 32327  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc. of Professional Process Servers (FAPPS)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/21/19  
Meeting Date

SB 462  
Bill Number (if applicable)

Topic LisPendens

Amendment Barcode (if applicable)

Name MARTY BOWEN

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

Address 108 E Jefferson  
Street

Phone 850 228 3904

TALLAHASSEE FL 32304  
City State Zip

Email m1bbkusa@1791.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Assoc. of Prof. Process Servers

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 494

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senators Hooper and Broxson

SUBJECT: Firefighters' Bill of Rights

DATE: March 21, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	<b>Favorable</b>
2.	McVaney	McVaney	GO	<b>Fav/CS</b>
3.	Peacock	Phelps	RC	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 494 amends the Firefighters' Bill of Rights, which provides specific rights to a firefighter under investigation and subject to interrogation for a reason that could lead to disciplinary action. The bill revises the definition of the term "interrogation" to include questioning pursuant to an informal inquiry. The bill revises the definition of the term "informal inquiry" to exclude certain routine work-related discussions. The bill requires all identifiable witnesses be interviewed before the beginning of an interrogation of a firefighter, when possible, and specified information must be provided to the firefighter before an interrogation is conducted. The bill authorizes a firefighter to provide a voluntary statement at any time after being informed of right to review witness statements and prohibits a firefighter from being threatened with disciplinary action during the course of an interrogation.

CS/CS/SB 494 requires that the firefighter be provided with a copy of the interrogation within a specified time frame, upon request. A firefighter must be notified and provided certain information before disciplinary actions are taken and be given an opportunity to address the findings.

State and local agencies employing firefighters may incur minimal costs in complying with the provisions of the bill.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Division of the State Fire Marshal

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).<sup>1</sup> Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;<sup>2</sup>
- Investigates the causes of fires;<sup>3</sup>
- Enforces arson laws;<sup>4</sup>
- Regulates the installation and maintenance of fire equipment;<sup>5</sup>
- Conducts firesafety inspections of state buildings;<sup>6</sup>
- Develops firesafety standards;<sup>7</sup>
- Provides facilities for the analysis of fire debris;<sup>8</sup> and
- Operates the Florida State Fire College.<sup>9</sup>

Additionally, the Division adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>10</sup>

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.<sup>11</sup> The Florida Fire College, part of the BFST, trains over 6,000 students per year.<sup>12</sup> The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the Division's annual report.<sup>13</sup>

### Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is housed within the DFS and consists of 14 members.<sup>14</sup> The Council is authorized to make recommendations for adoption by the Division on:

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<sup>1</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* Section 20.121, F.S.

<sup>2</sup> Section 633.128(1), F.S. *See also* Chapter 633, part IV: Fire Standards and Training, F.S.

<sup>3</sup> Section 633.104(2)(e), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 633.104(2)(b), F.S. *See also* Section 633.104(2)(c), F.S., and Chapter 633, part III: Fire Protection and Suppression, F.S.

<sup>6</sup> Section 633.218, F.S.

<sup>7</sup> Chapter 633, part II: Fire Safety and Prevention, F.S.

<sup>8</sup> Section 633.432, F.S.

<sup>9</sup> Section 633.128(1)(h)–(q), F.S. *See also* Sections ss. 633.428–633.434, F.S.

<sup>10</sup> Section 633.202(1), F.S.

<sup>11</sup> *See* <https://www.myfloridacfo.com/Division/sfm/> (last visited on Feb. 13, 2019).

<sup>12</sup> *See* Division of State Fire Marshal, *About the Florida State Fire Marshal*, <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last visited on Feb. 13, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> Section 633.402(1), F.S.

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Minimum curriculum requirements for schools operated by or for any fire service provider<sup>15</sup> for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by ch. 633, F.S.<sup>16</sup>

The Council may also make or support studies on any aspect of firefighting employment, education, and training or recruitment.<sup>17</sup>

### **Curriculum Requirements for Firefighters**

A person applying for certification as a firefighter must:

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, a felony, a crime punishable by imprisonment of one year or more or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the division with a current processing fee;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and
- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.<sup>18</sup>

The Division is responsible for establishing a Minimum Standards Course as the training and educational curriculum required in order for a firefighter to obtain a Firefighter Certificate of Compliance (FCOC).<sup>19</sup> A FCOC is issued by the Division to an individual who does all of the following:

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.<sup>20</sup>

In order for a firefighter to retain or renew his or her FCOC, every four years he or she must:

- Be active as a firefighter;

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<sup>15</sup> Section 633.102(13), F.S., defines “fire service provider” as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

<sup>16</sup> Section 633.402(9), F.S.

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

<sup>18</sup> Section 633.412, F.S.

<sup>19</sup> Section 633.408(1)(a), F.S.

<sup>20</sup> Section 633.408(4), F.S.

- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the Division;
- Within six months before the four-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.<sup>21</sup>

### **Firefighters' Bill of Rights**

The Firefighters' Bill of Rights provides specific rights when a firefighter is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension or dismissal.<sup>22</sup> There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.<sup>23</sup>

The Firefighters' Bill of Rights contains the following definitions:<sup>24</sup>

- "Firefighter" means a person who is certified in compliance with s. 633.408, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.
- "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters.
- "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced.
- "Formal investigation" means the process of investigation ordered by supervisory personnel, after the supervisory personnel have previously determined that the firefighter shall be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted for the purpose of gathering evidence of misconduct.
- "Administrative proceeding" means any nonjudicial hearing which may result in the recommendation, approval, or order of disciplinary action against, or suspension or discharge of, a firefighter.
- "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but shall not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry shall not be deemed to be an interrogation.

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<sup>21</sup> Section 633.414(1), F.S.

<sup>22</sup> Part VIII, Ch. 112, F.S.

<sup>23</sup> Part VI, Ch. 112, F.S.

<sup>24</sup> Section 112.81, F.S.

An interrogation of a firefighter must be conducted pursuant to the following terms:<sup>25</sup>

- The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.
- No firefighter shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.
- All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty, unless the importance of the interrogation or investigation is of such a nature that immediate action is required.
- The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- Interrogation sessions shall be of reasonable duration and the firefighter shall be permitted reasonable periods for rest and personal necessities.
- The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.
- An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.
- No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

### **Public Records Exemption for Agency Investigations of Employee Misconduct**

Current law provides a public records exemption for agency<sup>26</sup> investigations into complaints of employee misconduct.<sup>27</sup> A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

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<sup>25</sup> Section 112.82, F.S.

<sup>26</sup> Section 119.011(2), F.S., defines agency as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>27</sup> Section 119.071(2)(k), F.S.



- Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Concluded the investigation with a finding to proceed with disciplinary action or file charges.<sup>28</sup>

### III. Effect of Proposed Changes:

**Section 1** amends the Firefighters' Bill of Rights including the definition of "interrogation" contained in s. 112.81(6), F.S., to stipulate that questioning pursuant to an informal inquiry is considered an interrogation.

This change eliminates an employing agency's ability to meet with a firefighter in an informal inquiry to mediate a complaint or discuss facts to determine whether a formal investigation should be initiated.

The bill also amends the definition of "informal inquiry" contained in s. 112.81(3), F.S., to provide that the term does not include discussions, such as safety sessions, normal operational fire debriefings, and routine work-related discussions.

**Section 2** amends s. 112.82(2), F.S., concerning the rights of firefighters to require all identifiable witnesses be interviewed before the beginning of an interrogation of a firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of a complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements.

Section 112.82(6), F.S., is amended to prohibit a firefighter from being threatened with transfer, dismissal, or disciplinary action during an interrogation.

Section 112.82(7), F.S., is amended to require a copy of the interrogation transcript, if made, be provided to a firefighter under investigation, upon request, without charge. If the firefighter requests a copy of the transcript, it must be provided within 72 hours, excluding weekends and holidays, after the interrogation.

**Section 3** creates s. 112.825, F.S., entitled notice of disciplinary action, providing additional protections for firefighters. A dismissal, demotion, transfer, reassignment, or other disciplinary action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against a firefighter unless the firefighter is notified of the action and the reason for the action before the effective date of the action.

A firefighter who is subject to disciplinary action that consists of suspension with loss of pay, demotion, or dismissal, or his or her representative, must, upon request, be given a complete copy of the investigative file, including the final investigative report and all evidence, by the

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<sup>28</sup> *Id.*

employing agency. The firefighter must be given the opportunity to address the findings in the final investigative report with the employing agency before such disciplinary action is taken. The contents of the complaint and all information obtained pursuant to the subsequent investigation must remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as provided under s. 119.071(2)(k).

**Section 4** provides an effective date of July 1, 2019.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An employing agency may have to amend internal policies and procedures, which will likely be a minimal impact to their resources.

An employing agency may incur some additional costs in providing the interrogation transcript and complete investigative file to the firefighter. These costs appear to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 112.81 and 112.82 of the Florida Statutes. This bill also creates section 112.825 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 March 21, 2019:**

The committee substitute revises the definition of “informal inquiry” to exclude certain routine work-related discussions.

**CS by Governmental Oversight and Accountability on March 12, 2019:**

The committee substitute removes language from the bill which may have expanded the exemption from public disclosure for certain complaints. Under the committee substitute, the complaint and other investigative information is confidential and exempt pursuant to the current law provisions contained in s. 119.071(2)(k), F.S.

**B. Amendments:**

None.



806688

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
	.	
	.	
	.	

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The Committee on Rules (Hooper) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 29 and 30  
insert:

(3) "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. The term does not include discussions such as safety sessions, normal operational fire



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debriefings, and routine work-related discussions.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 27 - 28

and insert:

Section 1. Subsections (3) and (6) of section 112.81,  
Florida Statutes, are amended to read:

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

And the title is amended as follows:

Delete lines 3 - 5

and insert:

amending s. 112.81, F.S.; revising definitions;

amending s. 112.82,

By the Committee on Governmental Oversight and Accountability;  
and Senators Hooper and Broxson

585-02952-19

2019494c1

A bill to be entitled

An act relating to the Firefighters' Bill of Rights; amending s. 112.81, F.S.; revising the definition of the term "interrogation" to include questioning pursuant to an informal inquiry; amending s. 112.82, F.S.; requiring that witnesses be interviewed and certain information be provided to a firefighter subjected to interrogation before the interrogation is conducted; authorizing a firefighter to provide a voluntary statement at any time after being informed of a certain right; prohibiting a firefighter from being threatened with certain disciplinary action during the course of an interrogation; requiring that a copy of the interrogation be provided to a firefighter within a specified timeframe, upon request; creating s. 112.825, F.S.; requiring that a firefighter be notified and provided certain information before certain disciplinary actions are taken; requiring that a firefighter be given the opportunity to address certain findings; requiring that certain information be kept confidential and exempt in accordance with existing law; providing an effective date.

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

Section 1. Subsection (6) of section 112.81, Florida Statutes, is amended to read:

112.81 Definitions.—As used in this part:

Page 1 of 4

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

585-02952-19

2019494c1

(6) "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but ~~does shall~~ not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry is considered ~~shall not be deemed to be~~ an interrogation for purposes of this part.

Section 2. Subsections (2), (6), (7), and (9) of section 112.82, Florida Statutes, are amended to read:

112.82 Rights of firefighters.—Whenever a firefighter is subjected to an interrogation, such interrogation shall be conducted pursuant to the terms of this section.

(2) A ~~No~~ firefighter may not ~~shall~~ be subjected to interrogation without first receiving written notice in of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter must ~~shall~~ be informed beforehand of the names of all complainants. All identifiable witnesses must be interviewed before the beginning of the interrogation of the firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of the complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements.

(6) The firefighter being interrogated may ~~shall~~ not be subjected to offensive language; threatened with transfer,

Page 2 of 4

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

585-02952-19

2019494c1

59 dismissal, or disciplinary action; or offered any incentive as  
 60 an inducement to answer any questions.

61 (7) A complete record of any interrogation ~~must shall~~ be  
 62 ~~made.~~ Such record may be electronically recorded, and If a  
 63 transcript of the ~~such~~ interrogation is made, the firefighter  
 64 under investigation must receive a copy, upon request, without  
 65 charge. If the firefighter requests a copy of the transcript, it  
 66 must be provided within 72 hours, excluding weekends and  
 67 holidays, after the interrogation shall be entitled to a copy  
 68 without charge. Such record may be electronically recorded.

69 (9) ~~A No~~ firefighter ~~may not shall~~ be discharged,  
 70 disciplined, demoted, denied promotion or seniority,  
 71 transferred, reassigned, or otherwise disciplined or  
 72 discriminated against in regard to his or her employment, or be  
 73 threatened with any such treatment as retaliation for or by  
 74 reason ~~solely~~ of his or her exercise of any of the rights  
 75 granted or protected by this part.

76 Section 3. Section 112.825, Florida Statutes, is created to  
 77 read:

78 112.825 Notice of disciplinary action.-

79 (1) A dismissal, demotion, transfer, reassignment, or other  
 80 disciplinary action that might result in loss of pay or benefits  
 81 or that might otherwise be considered a punitive measure may not  
 82 be taken against a firefighter unless the firefighter is  
 83 notified of the action and the reason for the action before the  
 84 effective date of the action.

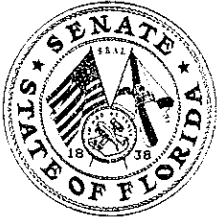
85 (2) A firefighter who is subject to disciplinary action  
 86 that consists of suspension with loss of pay, demotion, or  
 87 dismissal, or his or her representative, must, upon request, be

585-02952-19

2019494c1

88 given a complete copy of the investigative file, including the  
 89 final investigative report and all evidence, by the employing  
 90 agency. The firefighter must be given the opportunity to address  
 91 the findings in the final investigative report with the  
 92 employing agency before such disciplinary action is taken. The  
 93 contents of the complaint and all information obtained pursuant  
 94 to the subsequent investigation must remain confidential and  
 95 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 96 Constitution as provided under s. 119.071(2)(k).

97 Section 4. This act shall take effect July 1, 2019.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ED HOOPER**

16th District

**COMMITTEES:**

Governmental Oversight and Accountability, Chair  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Health and  
Human Services  
Health Policy  
Infrastructure and Security  
Joint Select Committee on Collective Bargaining,  
Alternating Chair  
Joint Administrative Procedures Committee

March 13<sup>th</sup>, 2019

The Honorable Lizbeth Benacquisto, Chair  
Rules Committee  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 494, Firefighters' Bill of Rights, be placed on the agenda of the next Rules Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me.  
Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a circular stamp or seal.

Ed Hooper

Cc: John B. Phelps, Staff Director  
Cynthia Futch, Administrative Assistant

**REPLY TO:**

- ☐ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

3/21-19

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

494

*Meeting Date*

*Bill Number (if applicable)*

Topic Fire Fighter Bill of Rights

806688

Name Jim Tolley

*Amendment Barcode (if applicable)*

Job Title President

Address 343 West Madison Street

Phone 850-224-7333

*Street*  
Tallahassee

*State*  
FL

*Zip*  
32301

Email jimt@fpfp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

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**

3/21-19

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

494

*Meeting Date*

*Bill Number (if applicable)*

Topic Fire Fighter Bill of Rights

*Amendment Barcode (if applicable)*

Name Jim Tolley

Job Title President

Address 343 West Madison Street

Phone 850-224-7333

*Street*  
Tallahassee

FL

32301

Email jimt@fpfp.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7052

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Informal Enforcement Actions/Trade Secrets/Office of Financial Regulation

DATE: March 20, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Knudson</u>	<u>Knudson</u>		<b>BI Submitted as Committee Bill</b>
1.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

SB 7052 amends s. 655.037(3) and (4), F.S., to save from repeal the exemptions to public record disclosure for informal enforcement actions performed by the Office of Financial Regulation, for trade secrets held by the Office of Financial Regulation in accordance with its statutory duties under the financial institutions codes.

These exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless saved from repeal by the Legislature. The bill removes the scheduled repeal date of the exemption.

The bill takes effect October 1, 2019.

## II. Present Situation:

### Public Records Law

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that

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

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

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

Only the Legislature may create an exemption to public records requirements.<sup>10</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> 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 provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

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<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995).

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

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

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

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

<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>13</sup> FLA. CONST., art. I, s. 24(c)

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>14</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>16</sup> with specified exceptions.<sup>17</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>18</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>19</sup>

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

In addition to the constitutional requirements relating to the enactment of a public records or open meetings exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR Act). The OGSR Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>20</sup> The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>21</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>22</sup> 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:

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<sup>14</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004).

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>16</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>17</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>21</sup> Section 119.15(3), F.S.

<sup>22</sup> Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>23</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>24</sup> or
- It protects trade or business secrets.<sup>25</sup>

Further, the OGSR Act requires specified questions to be considered during the review process.<sup>26</sup> In examining an exemption, the OGSR Act asks the Legislature to question carefully the purpose and necessity of reenacting the exemption.

If in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>27</sup> If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>28</sup>

### **Regulation of State-Chartered Financial Institutions**

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (Codes) in chapter 655 through chapter 667 of the Florida Statutes. Section 655.032 of the Codes authorizes the OFR to make investigations and examinations pursuant to its authority to ensure compliance with, and prevent violations of, the Codes and the administrative rules adopted pursuant to the Codes.<sup>29</sup> The Codes direct the OFR to take into account the appropriateness of an administrative remedy or penalty provided for the Codes with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and other matters as justice may require.<sup>30</sup> Accordingly, the OFR will sometimes impose an “informal enforcement action” which the public records exemption in s. 655.057, F.S., defines to mean a board resolution, document of resolution, or an agreement in writing between the OFR and a financial institution which the OFR imposes when it determines that a formal enforcement

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<sup>23</sup> Section 119.15(6)(b)1., F.S.

<sup>24</sup> Section 119.15(6)(b)2., F.S.

<sup>25</sup> Section 119.15(6)(b)3., F.S.

<sup>26</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>27</sup> FLA. CONST. art. I, s. 24(c).

<sup>28</sup> Section 119.15(7), F.S.

<sup>29</sup> See s. 655.032, F.S., and s. 655.045, F.S.

<sup>30</sup> Section 655.031(1), F.S.

action is not an appropriate administrative remedy.<sup>31</sup> The informal enforcement action must set forth a program of corrective action to address safety and soundness deficiencies or violations of law or rule of the institution. Informal enforcement actions are not subject to enforcement by imposition of an administrative fine under s. 655.041, F.S.

### **Public Records Exemptions for Informal Enforcement Actions and Trade Secrets**

Chapter 655.057, F.S., exempts from public records requirements various records held by the OFR related to its authority and duties to enforce the Codes, including records related to investigations and examinations. The Legislature in 2014 created a public records exemption for informal enforcement actions of the OFR and trade secrets as defined by s. 688.002, F.S., held by the OFR in accordance with its statutory duties with respect to the financial institutions codes.<sup>32</sup> A trade secret is defined by s. 688.002(4), F.S., to mean information,<sup>33</sup> that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Such information must also be the subject of efforts that are reasonable under the circumstances to maintain its secrecy to be a trade secret.

The public records exemption for “informal enforcement actions” continues to hold informal enforcement actions confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution after the investigation relating to the informal enforcement action is completed or ceases to be active if the disclosure would:

- Jeopardize the integrity of another active investigation.
- Impair the safety and soundness of the financial institution.
- Reveal personal financial information.
- Reveal the identity of a confidential source.
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.
- Reveal investigative techniques or procedures.

The Legislature stated that the exemption was necessary because disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and would place Florida-chartered institutions at a competitive disadvantage because financial institutions chartered federally or in other states are generally protected by the laws of those jurisdictions from the disclosure of informal enforcement actions. The Legislature stated that the public records exemption for trade secrets was necessary to prevent disclosures that could result in a competitive disadvantage and economic loss to a financial institution.

Professional Staff of the Banking and Insurance Committee submitted a questionnaire to the OFR regarding the public records exemptions for informal enforcement actions and trade secrets

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<sup>31</sup> Section 655.057(12)(b), F.S.

<sup>32</sup> Chapter 2014-99, L.O.F.

<sup>33</sup> Including a formula, pattern, compilation, program, device, method, technique, or process

held by the office.<sup>34</sup> The OFR reported that it uses informal enforcement actions to address weak operating practices, deteriorating financial conditions, violations of the Codes, or activity that impairs the safety and soundness of a financial institution. The OFR receives public records requests for information that would include informal enforcement actions and that the OFR responds to such requests by redacting all information deemed confidential and exempt under s. 655.057, F.S. The OFR indicated that the public records exemption for informal enforcement actions remains necessary and that its repeal is necessary to ensure that new financial institutions are willing to be chartered in Florida and to prevent existing Florida-chartered or licensed entities from converting to an entity regulated by a different state or the federal government. The OFR also indicated that the public records exemption for trade secrets is also necessary to allow the agency to perform its statutorily mandated regulatory oversight, some of which requires the OFR to collect trade secret information. Entities regulated by the office may claim a trade secret in order to keep proprietary information private.

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

This bill saves from repeal the public records exemptions in s. 655.037(3), F.S., for informal enforcement actions performed by the Office of Financial Regulation, and s. 655.037(4), F.S., for trade secrets held by the Office of Financial Regulation in accordance with its statutory duties under the financial institutions codes, by removing the repeal date.

These exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless re-enacted and saved from repeal by the Legislature.

The bill takes effect October 1, 2019.

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

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

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

#### **B. Public Records/Open Meetings Issues:**

##### ***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill reenacts and does not create or expand an existing exemption, thus the bill only requires a majority of the members present to re-enact the public records exemption.

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<sup>34</sup> *Open Government Sunset Review Questionnaire for Subsection (3) and (4) of Section 655.057, F.S.*, Senate Banking and Insurance Committee (November 16, 2018). On file with the Senate Banking and Insurance Committee.



***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption to public records requirements and thus does not require a public necessity statement.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect proposals seeking research funding from the organization or a plan or program for either initiating or supporting research. This bill exempts from the public records informal enforcement actions and trade secrets held by the Office of Financial Regulation. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

The OFR will continue to incur costs related to the redaction of records in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 655.057 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By the Committee on Banking and Insurance

597-02482-19

20197052\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 655.057, F.S., relating to exemptions from public records requirements for informal enforcement actions by the Office of Financial Regulation and certain trade secrets held by the office under the financial institutions codes; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Subsection (14) of section 655.057, Florida Statutes, is amended, and subsections (3) and (4) of that section are republished, to read:

655.057 Records; limited restrictions upon public access.—

(3) Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or ceases to be active, informal enforcement actions are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the extent that disclosure would:

(a) Jeopardize the integrity of another active investigation.

(b) Impair the safety and soundness of the financial institution.

(c) Reveal personal financial information.

(d) Reveal the identity of a confidential source.

(e) Defame or cause unwarranted damage to the good name or

597-02482-19

20197052\_\_

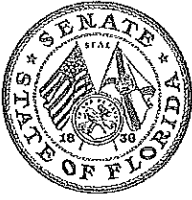
reputation of an individual or jeopardize the safety of an individual.

(f) Reveal investigative techniques or procedures.

(4) Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the office in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(14) Subsections (3) and (4) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2019.



The Florida Senate  
**Committee Agenda Request**

**To:** Senator Lizbeth Benacquisto, Chair  
Rules Committee

**Subject:** Committee Agenda Request

**Date:** March 18, 2019

7052

I respectfully request that **Senate Bill # 705(02)4,6**, relating to OGSR, be placed on the:

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

A handwritten signature in cursive script, reading "Darryl Rouson".

\_\_\_\_\_  
Senator Darryl Rouson  
Florida Senate, District 19

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SJR 690

INTRODUCER: Senator Rodriguez

SUBJECT: Single Subject Limitation for Taxation and Budget Reform Commission

DATE: March 20, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	<b>Favorable</b>
2.	Roberts	Roberts	EE	<b>Favorable</b>
3.	Stallard	Phelps	RC	<b>Favorable</b>

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**I. Summary:**

SJR 690 limits any amendment to the Constitution proposed by the Taxation and Budget Reform Commission to “one subject and matter connected therewith.”

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Taxation and Budget Reform Commission convenes in 2027, and thus it would be the first Commission to be governed by the amendment.

**II. Present Situation:**

**Overview**

The Florida Constitution requires that a Taxation and Budget Reform Commission be established once every 20 years and that it have the authority to propose a revision of the “Constitution or any part of it dealing with taxation or the state budgetary process.” Although the Commission’s proposals are limited to this area of law, each proposal may nonetheless embrace multiple subjects within this area.

## **Taxation and Budget Reform Commission**

### ***Origin***

In 1988, this state's voters approved a constitutional amendment that was proposed by the Legislature to create the Taxation and Budget Reform Commission.<sup>1</sup> The amendment specified that the Commission must convene for the first time in 2007, and once every 20 years afterward.<sup>2</sup>

### ***Members***

The Constitution requires that the Commission be comprised of 25 voting members and 4 non-voting "ex-officio" members. The 25 voting members must be appointed by the Governor (11), the Speaker of the House (7), and the Senate President (7). The 4 non-voting members must be chosen by the Speaker (2) and the Senate President (2) from the members of their respective houses; one of the two choices from each house must be from the minority party. At its initial meeting, the commissioners must elect a commissioner who is not also a legislator to serve as chair.

### ***Task, Procedures, and Authority***

The Commission is tasked with examining this state's budgetary process, revenue needs, and expenditure processes.<sup>3</sup> Upon examining these matters, the Commission must issue a report of the results of its review, and propose any recommended statutory changes to the Legislature. The Commission may also propose "a revision of this Constitution or any part of it dealing with taxation and the state budgetary process."<sup>4</sup>

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. It says only that the Commission must elect a chair at its initial meeting, convene for further meetings at the call of the chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings, as it deems necessary to carry out its responsibilities."<sup>5</sup>

## **The Single-Subject Requirement**

### ***Amendments that are Limited to One Subject***

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. As the Florida Supreme Court has repeatedly stated, "the citizen initiative is the only method that is constrained by the single-subject requirement."<sup>6</sup>

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<sup>1</sup> See HJR 1616 (1988).

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

<sup>3</sup> FLA. CONST. art. XI, s. 6(d).

<sup>4</sup> FLA. CONST. art. XI, s. 6(e).

<sup>5</sup> FLA. CONST. art. XI, s. 2.

<sup>6</sup> *Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888 (Fla. 2000); see also, *Charter Review Commission of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) ("Only proposals originating through a petition initiative are subject to the single-subject rule.").

***Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives***

The Florida Supreme Court has also repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.<sup>7</sup>

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”<sup>8</sup> Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.<sup>9</sup>

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Taxation and Budget Reform Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”<sup>10</sup> This is not true, the Court noted, of citizen initiatives.<sup>11</sup>

***What “One Subject” Means***

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”<sup>12</sup> In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”<sup>13</sup> Moreover, the single-subject limitation prohibits an amendment from

(1) engaging in “logrolling” or (2) “substantially altering or performing the functions of multiple aspects of government.” The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions,

<sup>7</sup> *Fine v. Firestone*, 448 So. 2d 984, 994 (Fla. 1984).

<sup>8</sup> *Id.* at 832 (quoting *Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

<sup>9</sup> *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984)).

<sup>10</sup> *See Id.* at 1339.

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

<sup>12</sup> *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

<sup>13</sup> *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016).

some of which electors might wish to support, in order to get an otherwise disfavored provision passed.<sup>14</sup>

Although “no single proposal can substantially *alter* or *perform* the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “*affect* several branches of government.”<sup>15</sup> However, “how an initiative proposal *affects* other articles or sections of the constitution *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal.”<sup>16</sup>

A brief look at three Supreme Court opinions will help illuminate the Court’s understanding of these legal principles, and therefore of what “one subject” means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a

right for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”<sup>17</sup>

In the Court’s analysis of the amendment, it identified two basic “components”—the establishment of a right and a guarantee of the government’s authority to regulate that right. The Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were “two sides of the same coin,” and were therefore “component parts or aspects of a single dominant plan or scheme,” and accordingly were “naturally related and connected to the amendment’s oneness of purpose.”<sup>18</sup> The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.<sup>19</sup>

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a “trust to restore the Everglades funded by a fee on raw sugar.”<sup>20</sup> The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.”<sup>21</sup> The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the “Everglades Ecosystem.” Additionally, the amendment “contemplate[d] the exercise of vast executive powers” by the trustees, including the

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<sup>14</sup> *Id.* at 827-28 (internal citations omitted).

<sup>15</sup> *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).

<sup>16</sup> *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).

<sup>17</sup> *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016) (quoting the language of the proposed amendment at issue, titled, “Rights of Electricity Consumers Regarding Solar Energy Choice”).

<sup>18</sup> *Id.* at 828.

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

<sup>20</sup> *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1337 (Fla. 1994).

<sup>21</sup> *Id.* at 1340.



“management, construction, and operation of water storage and sewer systems.”<sup>22</sup> Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.<sup>23</sup>

In yet another opinion, issued in *Fine v. Firestone*, the Court disapproved of a proposed amendment that contained three subjects.<sup>24</sup> The Court did so without specifying that the subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment

limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.<sup>25</sup>

### ***Joint Resolution***

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.<sup>26</sup> Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house of the Legislature.<sup>27</sup> Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.<sup>28</sup>

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

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Taxation and Budget Reform Commission be limited to “one subject and matter connected therewith.”

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.<sup>29</sup>

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

<sup>23</sup> *Id.*

<sup>24</sup> *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

<sup>25</sup> *Id.* at 992 (Fla. 1984).

<sup>26</sup> FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

<sup>27</sup> FLA. CONST. art. XI, s. 1.

<sup>28</sup> FLA. CONST. art. XI, s. 5.

<sup>29</sup> See e.g., *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearn*, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This resolution amends Article XI, section 6 of the Florida Constitution.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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<sup>30</sup> Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Feb. 25, 2019) (on file with the Senate Committee on Judiciary).

By Senator Rodriguez

37-01098-19

2019690\_\_

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject.

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

That the following amendment to Section 6 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 6. Taxation and budget reform commission.—

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority

37-01098-19

2019690\_\_

party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a

37-01098-19

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59 strategic decisionmaking process.

60 (e) The commission shall hold public hearings as it deems  
61 necessary to carry out its responsibilities under this section.  
62 The commission shall issue a report of the results of the review  
63 carried out, and propose to the legislature any recommended  
64 statutory changes related to the taxation or budgetary laws of  
65 the state. Not later than one hundred eighty days prior to the  
66 general election in the second year following the year in which  
67 the commission is established, the commission shall file with  
68 the custodian of state records its proposal, if any, of a  
69 revision of this constitution or any part of it dealing with  
70 taxation or the state budgetary process. Any proposal of a  
71 revision of this constitution, or any part thereof, filed by the  
72 commission with the custodian of state records must embrace but  
73 one subject and matter directly connected therewith.

74 BE IT FURTHER RESOLVED that the following statement be  
75 placed on the ballot:

76 CONSTITUTIONAL AMENDMENT

77 ARTICLE XI, SECTION 6

78 ESTABLISHING SINGLE-SUBJECT LIMITATION FOR TAXATION AND  
79 BUDGET REFORM COMMISSION PROPOSALS.—Proposing an amendment to  
80 the State Constitution to require that any proposal of a  
81 revision to the State Constitution, or any part thereof, filed  
82 by the Taxation and Budget Reform Commission with the custodian  
83 of state records for placement on the ballot be limited to a  
84 single subject and matter directly connected to such subject.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

03/21/2019  
Meeting Date

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

SB690  
Bill Number (if applicable)

Topic SINGLE SUBJECT LIMITATION FOR TAXATION AND BUDGET REFORM GRANTS

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title DIRECTOR OF COALITIONS

Address 200 W COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

FL.

City

State

Zip

Email cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AMERICANS FOR PROSPERITY

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7010

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Treatment-based Drug Court Programs

DATE: March 20, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Tulloch</u>	<u>Cibula</u>		<b>JU Submitted as Committee Bill</b>
1.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Tulloch</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 7010 amends s. 397.334, F.S. to save from repeal a public records exemption for health-related records, reports, and evaluations concerning applicants to or participants in treatment-based drug court programs that is scheduled to repeal on October 2, 2019.

Treatment-based drug court programs identify and treat eligible individuals whose involvement in the justice system is largely due to substance abuse or addiction. In providing substance abuse treatment, drug court programs aim to reduce criminal recidivism and domestic violence by addressing one of the underlying causes of such behavior.

In order to determine an individual's eligibility for the drug court program, or to monitor a participant's progress in the program, a treatment provider must share the individual's health-related information with the judge and other relevant parties on the participant's drug court multidisciplinary team. Because an individual's health information becomes part of the court's record, the public records exemption makes the following health-related records, reports, and evaluations both confidential and exempt from inspection and copying by the public:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The bill removes the scheduled repeal date to continue the public records exemption for information relating to participants and persons considered for participation in treatment-based drug court programs.

The bill takes effect October 1, 2019.

## II. Present Situation:

### Public Records Law

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

The Public Records Act contains general exemptions that apply across agencies. Agency- or program-specific exemptions are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

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

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

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



under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

Only the Legislature may create an exemption to public records requirements.<sup>10</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> 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 provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>14</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

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

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>16</sup> with specified exceptions.<sup>17</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>18</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>19</sup>

### ***OFSR Review Process***

In examining an exemption, the Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no

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<sup>8</sup> Section 119.07(1)(a), F.S.

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

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

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

<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>16</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>17</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

broader than necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes of the Act, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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?

### ***OFSR Review Outcomes***

At the conclusion of the review process, the Legislature may choose to (1) continue the existing exemption, (2) continue and narrow the exemption, (3) continue and expand the exemption, or (4) “sunset” (automatically repeal) the exemption. As a matter of historic practice, when choosing to continue an exemption, continuation has been accomplished by repealing the sunset date rather than reenacting the exemption.

If the Legislature chooses to either (1) continue the exemption without substantive changes or (2) continue and narrow the exemption, then it may do so *without* a public necessity statement and two-thirds vote for passage.

However, if the exemption is (3) continued and *expanded*, then a public necessity statement and two-thirds vote for passage are required.<sup>25</sup>

On the other hand, if (4) the Legislature allows the exemption to sunset (repeal automatically), no action need be taken. The previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

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<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S.

<sup>25</sup> FLA. CONST. art. I, s. 24(c).

<sup>26</sup> Section 119.15(7), F.S.

## Overview of Treatment Based Drug Courts

Treatment-based drug courts are a type of problem-solving court aimed at addressing one of the causes of criminal behavior and domestic violence: substance abuse and addiction.<sup>27</sup> Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals may either be diverted to a substance abuse treatment center shortly after entering the justice system, or may be required to complete treatment later, as a condition of probation/community control or a dependency case plan. To help these individuals successfully complete treatment, drug courts provide incentives (such as reduced penalties) and support<sup>28</sup> to the individual to help him or her succeed.<sup>29</sup>

Section 397.334, F.S., the statute under review, authorizes a county to fund a treatment-based drug court program to provide individualized treatment to eligible individuals in the criminal justice or dependency system.<sup>30</sup> The goal in providing treatment is to reduce criminal recidivism as well as to break the cycle of domestic violence, child abuse, and neglect owing to substance abuse.<sup>31</sup> Ultimately, entry into a treatment-based drug court program is *voluntary*, and the written consent and agreement of the potential participant is necessary for a court to order him or her into a treatment program.<sup>32</sup>

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<sup>27</sup> See Florida Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Jan. 14, 2019).

<sup>28</sup> Section 397.334(1), F.S. Each county opting to fund a drug court program must implement the following 10 therapeutic jurisprudence principles: (1) integration of alcohol, drug treatment, and mental health services into justice system case processing; (2) nonadversarial approach; (3) early identification of eligible participants; (4) continuum of services; (5) alcohol and drug testing for abstinence; (6) coordinated strategy for responses to participants' compliance; (7) ongoing judicial interaction; (8) monitoring and evaluation for program effectiveness; (9) interdisciplinary education; and (10) partnerships with stakeholders. s. 397.334(4)(a)-(j), F.S. Note, because drug court programs are individually operated by each county and are not uniform, the Office of State Court Administrators (OSCA) publishes a guide setting out the best practice standards for drug courts to follow. This guide is based largely on the research and analysis by the National Association of Drug Court Professionals (NADP). See Florida Courts, *Florida Adult Drug Court Best Practice Standards*, June 2017, [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf).

<sup>29</sup> See *supra*, n. 20.

<sup>30</sup> See *supra*, n. 21.

<sup>31</sup> See Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "Introduction," June 2017, p. 2 [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf). See also s. 397.305(1), F.S. ("Substance abuse impairment is a disease which affects the whole family and the whole society and requires a system of care that includes prevention, intervention, clinical treatment, and recovery support services that support and strengthen the family unit."); s. 397.305(8), F.S. ("It is the intent of the Legislature to provide an alternative to criminal imprisonment for substance abuse impaired adults and juvenile offenders by encouraging the referral of such offenders to service providers not generally available within the juvenile justice and correctional systems, instead of or in addition to criminal penalties."); s. 39.001(6)(d), F.S. ("It is the intent of the Legislature to encourage the use of . . . the drug court program model established under s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address mental illnesses and substance abuse disorders as the court deems appropriate at every stage of the dependency process.").

<sup>32</sup> Section 397.334(2), F.S. As part of giving voluntary consent, the individual must be given a written copy of the "coordinated strategy" for treatment developed by the multidisciplinary team that will monitor the participant's progress. See s. 397.334(5), F.S. and "Participation" discussion, *infra*.

Throughout the drug court evaluation and treatment process, records of a drug court participant's screenings, diagnosis, and progress are made part of the participant's court record.<sup>33</sup> This process is discussed in more detail as follows.

### ***Eligibility Screening Records***

First, a potential participant must be screened for eligibility. Generally, a potential drug court participant is identified by one of the parties involved either when an individual enters the criminal justice system or when the state intervenes in a domestic matter.<sup>34</sup> The potential participant is then screened for eligibility by the appropriate agencies and mental health treatment professionals using "evidence-based assessment tools and procedures" in order to determine the individual's level of risk and whether he or she can be treated safely and effectively.<sup>35</sup>

If an individual is determined to be eligible by the appropriate agency and mental health treatment professional, the applicant's screening information, including mental health assessments, will be referred to the presiding judge who will ultimately decide whether to permit the individual to participate. As stated above, the participant must voluntarily agree to enter the program and give written consent.<sup>36</sup>

### ***Treatment Records***

Next, participants accepted to the drug court programs generally receive outpatient evaluation and treatment over the course of 9 to 12 months.<sup>37</sup> Treatment is conducted in phases which are more intensive in the beginning, and consists of group counseling, individual counseling, and peer support groups.<sup>38</sup> Participants must also submit to drug and alcohol testing throughout the

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<sup>33</sup> See generally *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 11 (On file with Senate Judiciary Committee).

<sup>34</sup> Section 397.334(1), F.S. (contemplating involvement of and encouraging participation by "the Department of Corrections, the Department of Children and Families, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and such agencies, local governments, law enforcement agencies, other interested public or private sources, and individuals to support the creation and establishment of these problem-solving court programs."). The drug court administrators surveyed noted that many agencies and individuals refer individuals to the drug court programs, from the individual's attorney, public defender, or family member to the individual's arresting officer or probation officer. See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 2: "how are cases referred to the program?" (On file with Senate Judiciary Committee).

<sup>35</sup> See s. 397.334(2)-(3), (5), F.S. (providing for pre and post-trial intervention programs and for a coordinated strategy for screening and treatment among a drug court team, respectively); s. 948.08, F.S. (providing that, for pre-trial drug court diversion programs, first time felony offenders (regardless of misdemeanor record) and non-violent felony offenders may be eligible if the judge, drug court manager, prosecutor, and victim agree); s. 948.16, F.S. (setting out eligibility for participation drug and alcohol-related misdemeanor pre-trial program). See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "I. Target Population," June 2017, pp. 3-4 [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf) (noting that those with a criminal record are not automatically disqualified from participating in drug court programs).

<sup>36</sup> See *supra*, n. 25.

<sup>37</sup> Section 397.334(4), F.S. See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "V. Substance Abuse Treatment," June 2017, pp. 12-14. [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf).

<sup>38</sup> *Id.*

program.<sup>39</sup> As appropriate, the drug court program may also assist the participant in obtaining additional services and treatments, such as finding drug-free housing, receiving medical treatment, or obtaining family or mental health counseling.<sup>40</sup>

A participant's treatment plan and progress is overseen by a multi-disciplinary drug court team, usually consisting of the judge or judicial officer, a case manager or treatment provider, the participant's legal representative, the participant, and representatives from any relevant state agencies.<sup>41</sup> Pursuant to the participant's written consent and agreement, the members of the multidisciplinary team share information about the participant both when developing the initial treatment plan and as necessary throughout treatment in order to assess the participant's progress and compliance.<sup>42</sup> Treatment evaluation and reports are part of the participant's court file.

Additionally, the team members attend status hearings where relevant information about the participant's treatment and progress may be shared in open court.<sup>43</sup>

### **Exemption and Confidentiality of Treatment-based Drug Court Program Records**

Before s. 397.334, F.S. was enacted in 2014, a drug court participant's court file was not automatically sealed as confidential and exempt from public inspection.<sup>44</sup> Rather, each individual drug court participant had to make a motion to seal the court record from public inspection.<sup>45</sup> For each individual motion filed, the judge had to hold a hearing and issue an order granting or denying the participant's motion.<sup>46</sup> This motion-driven process reportedly had a significant impact on the workload for both the judges and the court clerks' (administrative) offices.<sup>47</sup>

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<sup>39</sup> Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "VII. Drug and Alcohol Testing," June 2017, pp. 18-19, [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf).

<sup>40</sup> Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "VI. Additional Treatment and Social Services," June 2017, pp. 15-19, [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf).

<sup>41</sup> Section 397.334(5), F.S. ("While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4)."). See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "VIII. Multidisciplinary Team," June 2017, p. 20-21 [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf).

<sup>42</sup> Section 397.334(5), F.S. See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "IV. Incentives, Sanctions, and Therapeutic Adjustments," June 2017, pp. 9-11, [https://www.flcourts.org/content/download/216679/1966020/Florida\\_Adult\\_Drug\\_Court\\_Standards\\_Full\\_Document.pdf](https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf).

<sup>43</sup> See n. 32, *supra*. See also *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 7.c. & 15.d. (On file with Senate Judiciary Committee).

<sup>44</sup> *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228, 229-230 (Fla. 2011). Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

<sup>45</sup> *Id.* See Fla. R. Jud. Admin. 2.420. Rule 2.420 made certain enumerated categories automatically exempt "but only insofar as [those categories] were confidential under [Florida's Sunshine Law] as of the date of adoption of Rule 2.420." *Poole v. South Dade Nursing & Rehab. Ctr.*, 139 So. 3d 436, 439 & n.4 (Fla. 3d DCA 2014) (holding that criminal competency evaluations are not confidential under Rule 2.420 or as a patient treatment record).

<sup>46</sup> *Id.*

<sup>47</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

### ***Florida Laws Protecting Patient Treatment Records***

Generally, a patient's treatment records are protected from disclosure by Florida's Constitutional Right to Privacy<sup>48</sup> and s. 456.057(7)(a), F.S. The patient's written consent is generally required before the patient's medical and treatment information may be disclosed to a third party.<sup>49</sup> Additionally, certain communications between a patient and psychotherapist will be deemed privileged and confidential, and cannot be disclosed without the consent of the patient to a third party.<sup>50</sup>

While the foregoing laws protect a patient's treatment records from disclosure to third parties, the protection does not extend to certain court-ordered evaluations, like criminal pre-trial competency evaluations, because the person under evaluation is not a "patient" who is "seeking care and treatment."<sup>51</sup> Rather, the purpose of such evaluations is to share information with a "third party," i.e., the trial court, in order to assist the trial court in making a decision; e.g., to assess whether a criminal defendant is competent to stand trial.<sup>52</sup>

### ***Federal Law Protecting Patient Treatment Records***

Under Federal law, an individual's health information is generally made private and protected from release by the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA restricts the release of "protected health information" that is "created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse" concerning the "past, present, and future physical or mental health" of an individual and any treatment received.<sup>53</sup>

Federal law also protects the confidentiality of substance abuse patients<sup>54</sup> in "federally-assisted" treatment-based drug court program.<sup>55</sup> Specifically, federal law prohibits the disclosure of (1) the identity of both applicants to and participants in a substance abuse treatment program, and (2) information about both applicants and patients used for diagnosis or treatment purposes.<sup>56</sup>

<sup>48</sup> FLA. CONST. art. I, s. 23. However, the right to privacy in medical records is not absolute and may give way when the state has a "compelling government interest" such as controlling and prosecuting criminal activity. *State v. Carter*, 23 So. 3d 798, 801 (Fla. 1st DCA 2009). For example, individuals filling a prescription generally have only "a limited expectation of privacy in pharmacy records." *Id.* (quoting *Murphy v. State*, 115 Wash.App. 297, 62 P.3d 533, 539 (2003)).

<sup>49</sup> Although exceptions are listed, section 456.057(7)(a) provides that "records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient." See also *Poole*, 139 So. 3d at 441 (discussing Florida privacy laws).

<sup>50</sup> Section 90.503, F.S. (defining a psychotherapist as one who is authorized to diagnose and treat "alcoholism and other drug addiction," including medical practitioners, psychologists, clinical social workers, therapists, mental health counselors, and personnel of treatment facilities who provide treatment.). See also *Poole* at 441.

<sup>51</sup> *Poole* at 441 (citing *Miami Herald Publishing Co. v. Chappell*, 403 So. 2d 1342, 1344-45 (Fla. 3d DCA 1981)).

<sup>52</sup> *Id.*

<sup>53</sup> 42 U.S.C. s 1320d(4). See also 45 C.F.R. s. 160.103.

<sup>54</sup> See 42 C.F.R. Part 2.

<sup>55</sup> 42 C.F.R. s. 2.12(b).

<sup>56</sup> See 42 C.F.R. ss. 2.11-2.12. The definition of "federally assisted" is broad enough that Florida's drug court program would likely be deemed "federally assisted" such that 42 C.F.R. Part 2 applies. The drug court program received federal grant money until 2013. See Florida Courts, *Florida's Adult Post-Adjudicatory Drug Court Expansion Program Facts*, July 2017, [https://www.flcourts.org/content/download/216244/1963410/PADC\\_Fact\\_Sheet.pdf](https://www.flcourts.org/content/download/216244/1963410/PADC_Fact_Sheet.pdf). If the state courts receive federal grant money that *could* be used toward the drug court, the drug court program meets the definition of "federally assisted." 42



However, “the HIPAA and other applicable confidentiality statutes . . . do *not* prohibit treatment professionals and or criminal justice professionals from sharing information related to substance abuse and mental health treatment” with one another.<sup>57</sup> For example, courts have already held that law enforcement officers and prosecutors are not specifically “covered entities” whose behavior is governed by HIPAA’s standards.<sup>58</sup> “Rather, these statutes control how and under what circumstances such information may be disclosed.”<sup>59</sup> “Treatment professionals are generally permitted to share confidential treatment information with criminal justice professionals pursuant to a voluntary, informed, and competent waiver of a patient’s confidentiality and privacy rights<sup>[60]</sup> or pursuant to a court order<sup>[61]</sup>.”<sup>62</sup> However, “[t]he scope of the disclosure must be limited to the minimum information necessary to achieve the intended aims of the disclosure.”<sup>63</sup>

### Staff Research of Practitioners and Interested Parties

With the assistance of the Office of State Court Administrators (OSCA), staff sent a survey to each drug court program coordinator or administrator.<sup>64</sup> None of the judicial circuits reported any problems understanding or administering the current exemption, nor did any report any litigation over the exemption. Additionally, none of the drug courts recommended repealing the exemption. Rather, half of the 20 judicial circuits (10) recommended keeping the existing public records exemption, while a quarter (5) recommended expanding the exemption to cover participant records in other problem-solving courts (e.g., veterans’ courts).<sup>65</sup> The remaining judicial circuits had no recommendation.<sup>66</sup>

When the exemption was passed in 2014, the stated public necessity for the exemption was to encourage participation in the drug court program.<sup>67</sup> In response to the survey, drug court

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C.F.R.. 2.12(b)(3)(ii)(Federally assisted if supported by funds provided by federal department or agency and being “[c]onducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program”). In any event, the drug courts surveyed indicated that they regard themselves as subject to 42 C.F.R. Part 2. *See Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 16.a. (On file with Senate Judiciary Committee).

<sup>57</sup> *See* note 32, *supra*, “C. Team Communication and Decision-Making” at p. 68.

<sup>58</sup> *Id.* *See Carter*, 23 So. 3d at 800 (holding that HIPAA standards did not apply nor, alternatively, provide for suppression of medical history received by law enforcement officer from a pharmacy under s. 893.07(4), F.S.) (*citing* 45 C.F.R. §§ 160.102(a), 160.104(a); *State v. Straehler*, 307 Wis.2d 360, 745 N.W.2d 431 (2007) with parenthetical “HIPAA standards not applicable to police officers”; *State v. Downs*, 923 So.2d 726 (La.App. 1st Cir.2005) with parenthetical “HIPAA standards not applicable to district attorney.”).

<sup>59</sup> *See supra*, n. 48 (citation omitted).

<sup>60</sup> 45 C.F.R.164.502(a).

<sup>61</sup> 45 C.F.R. §164.512(e).

<sup>62</sup> *See supra*, n. 48 (citation omitted).

<sup>63</sup> *Id.* (*citing* 45 C.F.R. ss. 164.502(b) & 164.514(d)).

<sup>64</sup> Nineteen out of the 20 judicial circuits have at least one active adult drug court. The third judicial circuit no longer operates a drug court. *See Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, (On file with Senate Judiciary Committee).

<sup>65</sup> *See* Florida Courts, *Problem-Solving Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts> (last visited Jan. 14, 2019).

<sup>66</sup> *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 12, 14, 17, August 2018, (On file with Senate Judiciary Committee).

<sup>67</sup> Ch. 2014-174, Laws of Fla.

program administrators reported observing no direct correlation between participation in the drug court program and the passage of the public records exemption.<sup>68</sup> Additionally, none of the drug court programs reported that anyone had declined to participate because some information may be discussed in open court. However, several programs reported that participants needing to discuss sensitive information with the court may go last when the court is less populated or may request to speak to the judge at a sidebar rather than speak in open court.<sup>69</sup>

Of the 19 circuits having active drug court programs, only four reported receiving public records requests concerning drug court participants since 2014. Those four circuits reported receiving eight requests from either the participant or the participant's attorney, or from the news media. In seven of the eight requests, the information sought in the public records request was not released without the participant's consent. However, the Sixth Circuit reported releasing the names of participants and the treatment centers they were attending to the Tampa Tribune because the information was already publicly disclosed in a court order.<sup>70</sup>

### ***Conclusion and Recommendation***

Absent the exemption, a drug court participant's health information could be at risk for public disclosure in several respects. First, initial screening records used to determine eligibility for participation must be shared with the court but may not necessarily be considered a protected treatment record under health privacy laws because the applicant is not yet a "patient." Second, while a participant's treatment records are protected from disclosure to a third party by other state and federal laws, drug court program participants have given written consent to share this information by virtue of their agreement to participate in the drug court program. As such, a drug court participant's treatment information and progress is shared between treatment providers, agencies, and the court and becomes part of the participant's court record. To ensure the public records law is not used to circumvent a participant's privacy in his or her treatment records and to ensure the participant's health records are sealed as quickly as possible, it appears the exemption should be reenacted.<sup>71</sup>

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

This legislation continues a public records exemption that was created in 2014 and is scheduled to repeal on October 2, 2019. The exemption makes the following health-related records contained in a drug court participant's court file confidential and exempt without the need to file a motion to seal that portion of the record:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

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<sup>68</sup> See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 10, August 2018, (On file with Senate Judiciary Committee). In fact, several courts reported that there was a decrease in participation in some of the years between 2014 and 2018 but that this was due to other factors, such as prosecutorial decisions in certain districts. *Id.*

<sup>69</sup> See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 7.c. and 15.d., August 2018, (On file with Senate Judiciary Committee).

<sup>70</sup> See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 13, August 2018, (On file with Senate Judiciary Committee).

<sup>71</sup> However, it should be noted that sensitive participant information may still be discussed in open court.



By removing the scheduled repeal of the exemption, the exemption is no longer subject to review under the Open Government Sunset Review Act unless the exemption is later broadened or expanded.

The bill takes effect October 1, 2019.

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

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

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue. Likewise, it does reduce the percentage of a state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

###### ***Vote Requirement***

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

###### ***Public Necessity Statement***

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

###### ***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect health-related information of applicants and participants in treatment-based drug court programs. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill makes health-related treatment records contained in the court file of a drug court participant automatically confidential and exempt from public inspection. By preserving the public records exemption, the bill may encourage some individuals to participate in the drug court program by alleviating any concern that his or her substance abuse or other medical history will be released to the public unless his or her attorney can get the file sealed. Additionally, individuals paying private counsel will not accrue the costs and fees associated with the motion-driven process to have the court file sealed.<sup>72</sup>

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

C. Government Sector Impact:

By preserving the public records exemption, the bill permits the courts to automatically seal a participant's court record and avoid the lengthier motion-driven process, thereby reducing the workload of the judges and court administration as well as associated due process costs.<sup>73</sup>

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 397.334, Florida Statutes.

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<sup>72</sup> See *supra*, n. 44 and text.

<sup>73</sup> *Id.*

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By the Committee on Judiciary

590-01173-19

20197010\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 397.334, F.S., relating to an exemption from public records requirements for certain information relating to screenings for participation in treatment-based drug court programs and subsequent treatment status reports; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (10) of section 397.334, Florida Statutes, is amended to read:

397.334 Treatment-based drug court programs.—

(10)(a) Information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Records created or compiled during screenings for participation in the program.

2. Records created or compiled during substance abuse screenings.

3. Behavioral health evaluations.

4. Subsequent treatment status reports.

(b) Such confidential and exempt information may be disclosed:

1. Pursuant to a written request of the participant or

Page 1 of 2

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

590-01173-19

20197010\_\_

person considered for participation, or his or her legal representative.

2. To another governmental entity in the furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a treatment-based drug court program.

(c) Records of a service provider which pertain to the identity, diagnosis, and prognosis of or provision of service to any person shall be disclosed pursuant to s. 397.501(7).

(d) This exemption applies to such information described in paragraph (a) relating to a participant or a person considered for participation in a treatment-based drug court program before, on, or after the effective date of this exemption.

~~(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7036

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/Payment of Toll on Toll Facilities/Identifying Information

DATE: March 20, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Price	Miller		<b>IS Submitted as Committee Bill</b>
1.	Hackett	McVane	GO	<b>Favorable</b>
2.	Price	Phelps	RC	<b>Favorable</b>

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**I. Summary:**

SB 7036 amends s. 388.155, F.S., to save from repeal the exemption from public inspection and copying for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. The bill removes the scheduled repeal date, resulting in the continuation of the exemption.

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

The bill takes effect October 1, 2019.

**II. Present Situation:**

**Public Records Law**

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

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

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

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

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

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

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

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

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

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

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

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

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

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

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

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

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

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

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

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

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>16</sup> 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;<sup>17</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>21</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

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

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

<sup>15</sup> Section 119.15(3), F.S.

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

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

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

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

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>22</sup>

### Payment of Tolls

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.<sup>23</sup> The Department of Transportation (FDOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.<sup>24</sup> FDOT has implemented two programs for electronic toll collection, SunPass and Toll-By-Plate.

SunPass<sup>25</sup> is a prepaid electronic system of toll collection that utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a vehicle's windshield. When a vehicle equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass customers typically fund prepaid accounts using credit cards, debit cards, and checks. SunPass account information includes the license plate number, address, and credit card information.<sup>26</sup>

The Toll-By-Plate program<sup>27</sup> is an image-based system of toll collection. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a tolling location, and the system mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts may be set up as pre-paid or post-paid.<sup>28</sup> Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.<sup>29</sup>

SunPass is accepted on all Florida toll roads, including Florida express lanes and most bridges. Travelers may also use the system to pay tolls to certain Florida expressway authorities,<sup>30</sup>

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<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> Section 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons exempted by the authorizing resolution for bonds issued to finance the facility, a law enforcement officer operating an official vehicle while on official law enforcement business, a person operating a fire vehicle or a rescue vehicle while on official business, a person participating in the funeral procession of a law enforcement officer killed in the line of duty, and a person with a disability.

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

<sup>25</sup> See Rule 14-15.0081, F.A.C., for information relating to FDOT's Toll Facilities Description and Toll Rate Schedule.

<sup>26</sup> SunPass, *Open A Private Account*, available at

<https://www.sunpass.com/en/signup/tsignupacknowledge.shtml?acttype=private>. (Last visited December 19, 2018).

<sup>27</sup> See Rule 14-100.005, F.A.C., for additional program information.

<sup>28</sup> *Id.*

<sup>29</sup> For additional information, see Florida's Turnpike Traveler Info, *All Electronic Tolling FAQ, TOLL-BY-PLATE*, available at <http://www.floridasturnpike.com/travelerInfo.html>. (Last visited December 19, 2018).

<sup>30</sup> For example, users of toll facilities of the Central Florida Expressway Authority (CFX) may pay for use of tolls of the FDOT, and vice versa, with either the CFX's E-Pass or the FDOT's SunPass. See Central Florida Expressway Authority, *Differences Between E-Pass & SunPass*, available at: <https://www.cfxway.com/faqs/e-pass-vs-sunpass/>. (Last visited December 18, 2018).



counties, or municipalities,<sup>31</sup> and to use toll facilities in Georgia and North Carolina.<sup>32</sup> Similarly, expressway authorities, counties, and municipalities may collect tolls through the FDOT's Toll-By-Plate system and, in limited cases, local entities may simply collect tolls through their own collection systems.<sup>33</sup>

Regardless of the collection method, customers must provide the required personal identifying information (such as name, address, debit/credit card numbers, checking account numbers, driver license numbers, license plate numbers, etc.) to set up toll payment accounts.

### **Open Government Sunset Review of the Public Records Exemption for Personal Identifying Information of Users of Toll Facilities Held by the FDOT, a County, a Municipality, or an Expressway Authority**

Originally enacted in 1996,<sup>34</sup> the subject exemption was most recently amended in 2014<sup>35</sup> to apply the exemption to the specified personal identifying information held by a municipality, in addition to the FDOT, a county, or an expressway authority, for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. In revising the exemption, the Legislature found that exempting personal identifying information about individuals held by the FDOT, a county, a municipality, or an expressway authority<sup>36</sup> for the identified purpose is a public necessity.

The Legislature further found that the exemption:

- Puts individuals who pay for tolls by Toll-By-Plate, which is video billed, on equal footing with individuals who pay for tolls by check, debit card, or credit card, or who pay cash at the toll booth.
- Protects the health and safety of the public by making exempt information regarding the locations, travel patterns, and travel activity of individuals as they use the toll road system.
- Protects the anonymity of all travelers on toll roads, not just cash customers, regardless of the method of payment of tolls.
- Promotes the use of the electronic toll collection system, a more efficient and effective government collection system for tolls, because paying for tolls, regardless of the implemented collection methods, saves individuals time when passing through toll facilities, compared to individuals who pay for tolls with cash, but costs much less to administer.
- Protects the privacy of individuals and promotes their right to be let alone from unreasonable government intrusion by prohibiting the public disclosure of private information about the finances and location of the individual using the toll road system.

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<sup>31</sup> For example, users of the Broad Causeway in the Town of Bay Harbor Islands pay the tolls through the SunPass System. See Miami Herald, *Bay Harbor Islands toll booths going electronic*, May 20, 2013, available at: <https://www.miamiherald.com/news/local/community/article1951693.html>. (Last visited December 28, 2018).

<sup>32</sup> Additional information on SunPass is available at: <https://www.sunpass.com/en/about/program.shtml>. (Last visited December 18, 2018.) See also SunSentinel, *SunPass now good in both Georgia, N.C.*, November 12, 2014, available at: <http://www.sun-sentinel.com/local/broward/fl-sunpass-georgia-20141112-story.html>. (Last visited December 18, 2018).

<sup>33</sup> For both SunPass and Toll-By-Plate systems, the FDOT often performs “back-office” toll collection for other owners of Florida toll facilities through interoperability agreements authorized by s. 338.161(5), F.S.

<sup>34</sup> Ch. 96-178, Laws of Fla.

<sup>35</sup> Ch. 2014-217, Laws of Fla.

<sup>36</sup> Before, on, or after the effective date of the amended exemption.

Section 338.155(6), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the Open Government Sunset Review Act, as well as discussions with and recommendations of the FDOT and various counties, municipalities, and expressway authorities, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 338.155(6), F.S.

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

The bill is based on an Open Government Sunset Review of a public records exemption for personal identifying information held by the FDOT, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.

The bill amends s. 338.155(6), F.S., to continue the current public records exemption created in 2014. Records containing the specified personal identifying information will continue to be exempt from public disclosure.

By removing the scheduled repeal of the exemption, the exemption is no longer subject to review under the Open Government Sunset Review Act.

The bill takes effect October 1, 2019.

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

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

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

#### **B. Public Records/Open Meetings Issues:**

##### ***Vote Requirement***

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

##### ***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity

justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information related to the payment of tolls for the use of roads. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 338.155 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By the Committee on Infrastructure and Security

596-02381-19

20197036\_\_

1 A bill to be entitled  
2 An act relating to a review under the Open Government  
3 Sunset Review Act; amending s. 338.155, F.S., which  
4 provides an exemption from public records requirements  
5 for personal identifying information held by the  
6 Department of Transportation, a county, a  
7 municipality, or an expressway authority for certain  
8 purposes; deleting the scheduled repeal of the  
9 exemption; providing an effective date.  
10  
11 Be It Enacted by the Legislature of the State of Florida:  
12  
13 Section 1. Subsection (6) of section 338.155, Florida  
14 Statutes, is amended to read:  
15 338.155 Payment of toll on toll facilities required;  
16 exemptions.—  
17 (6) Personal identifying information held by the Department  
18 of Transportation, a county, a municipality, or an expressway  
19 authority for the purpose of paying, prepaying, or collecting  
20 tolls and associated administrative charges due for the use of  
21 toll facilities is exempt from s. 119.07(1) and s. 24(a), Art. I  
22 of the State Constitution. This exemption applies to such  
23 information held by the Department of Transportation, a county,  
24 a municipality, or an expressway authority before, on, or after  
25 the effective date of the exemption. ~~This subsection is subject~~  
26 ~~to the Open Government Sunset Review Act in accordance with s.~~  
27 ~~119.15 and shall stand repealed on October 2, 2019, unless~~  
28 ~~reviewed and saved from repeal through reenactment by the~~  
29 ~~Legislature.~~

Page 1 of 2

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

596-02381-19

20197036\_\_

30 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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

# CourtSmart Tag Report

**Room:** EL 110  
**Caption:** Senate Committee on Rules

**Case No.:**  
**Judge:**

**Type:**

**Started:** 3/21/2019 1:33:24 PM

**Ends:** 3/21/2019 1:59:14 PM

**Length:** 00:25:51

1:33:23 PM Meeting called to order by Chair Benacquisto  
1:33:28 PM Roll call  
1:33:35 PM Quorum present  
1:34:13 PM Senator Bean recognized to introduce CS/SB 96  
1:35:31 PM Senator Bean recognized to introduce amendment 462062  
1:36:40 PM Questions?  
1:36:44 PM Debate?  
1:36:48 PM Amendment 462062 adopted  
1:36:56 PM Back on the bill as amended  
1:37:01 PM Public testimony  
1:37:04 PM Chief Gary Hester of the Florida Police Chiefs Association waives in support  
1:37:09 PM Jess McCarty of Miami-Dade County waives in support  
1:37:17 PM Stephen Winn of the Gadsden County Sheriff's Office waives in support  
1:37:22 PM Travis Moore of the Animal Legal Defense Fund waives in support  
1:37:25 PM Jim Trolley of the Florida Professional Firefighters waives in support  
1:37:29 PM Debate?  
1:37:31 PM Senator Bean recognized to close on CS/CS/SB 96  
1:37:49 PM Roll call  
1:38:15 PM CS/CS/SB 96 reported favorably  
1:38:28 PM Senator Rouson recognized to introduce SB 7052  
1:38:53 PM Questions?  
1:39:25 PM Debate?  
1:39:29 PM Senator Rouson waives his close  
1:39:34 PM Roll call  
1:39:37 PM SB 7052 reported favorably  
1:40:08 PM Senator Perry recognized to introduce SB 310  
1:40:21 PM Questions?  
1:40:39 PM Senator Lee asks a question  
1:40:48 PM Senator Perry in response  
1:40:54 PM Public testimony  
1:41:30 PM Steve Dyal of Polaris waives in support  
1:41:36 PM Debate?  
1:41:40 PM Senator Perry waives his close  
1:41:49 PM Roll call  
1:41:52 PM SB 310 reported favorably  
1:42:21 PM Senator Powell recognized to introduce CS/CS/SB 462  
1:42:47 PM Senator Powell recognized to introduce amendment 890030  
1:43:50 PM Questions on amendment?  
1:44:02 PM Senator Braynon asks a question  
1:44:19 PM Senator Powell in response  
1:44:51 PM Senator Lee asks a question  
1:45:10 PM Amendment 890030 adopted  
1:45:30 PM Senator Powell recognized to introduce amendment 720962  
1:46:13 PM Questions?  
1:46:23 PM Senator Powell waives his close  
1:46:34 PM Amendment 720962 adopted  
1:46:44 PM Back on the bill as amended  
1:46:53 PM Public testimony  
1:46:57 PM Brittany Finkbeiner of the Real Property, Probate & Trust Law Section of the Florida Bar waives in support  
1:47:03 PM Michael Compton of FAPPS waives in support  
1:47:09 PM Marty Bowen of FAPPS waives in support  
1:47:17 PM Debate?

1:47:20 PM Senator Braynon in debate  
1:47:35 PM Senator Powell recognized to close on CS/CS/CS/SB 462  
1:47:53 PM Roll call  
1:48:05 PM CS/CS/CS/SB 462 reported favorably  
1:48:38 PM Chair turned back over to Chair Benacquisto  
1:48:53 PM Senator Hooper recognized to introduce CS/SB 494  
1:49:20 PM Senator Hooper recognized to introduce amendment 806688  
1:50:04 PM Questions?  
1:50:08 PM Public testimony  
1:50:11 PM Jim Trolley of Florida Professional Firefighters waives in support  
1:50:17 PM Debate?  
1:50:20 PM Amendment 806688 adopted  
1:50:30 PM Back on the bill as amended  
1:50:36 PM Public testimony  
1:50:38 PM Jim Trolley of Florida Professional Firefighters waives in support  
1:50:43 PM Debate?  
1:50:47 PM Senator Hooper waives his close  
1:50:52 PM Roll call  
1:50:57 PM CS/CS/SB 494 reported favorably  
1:51:18 PM Senator Rodriguez recognized to introduce SJR 690  
1:52:59 PM Questions?  
1:53:02 PM Senator Lee asks a question  
1:53:19 PM Senator Rodriguez in response  
1:54:01 PM Public testimony  
1:54:08 PM Cesar Grajales of Americans for Prosperity waives in support  
1:54:11 PM Debate?  
1:54:12 PM Senator Bradley in debate  
1:54:39 PM Senator Rodriguez waives his close  
1:54:48 PM Roll call  
1:54:50 PM SJR 690 reported favorably  
1:55:15 PM Senator Simmons recognized to introduce SB 7010  
1:56:23 PM Questions?  
1:56:29 PM Debate?  
1:56:32 PM Senator Simmons waives his close  
1:56:56 PM Roll call  
1:57:00 PM SB 7010 reported favorably  
1:57:21 PM Senator Lee recognized to introduce SB 7036  
1:57:53 PM Questions?  
1:57:57 PM Debate?  
1:58:02 PM Senator Lee waives his close  
1:58:07 PM Roll call  
1:58:12 PM SB 7036 reported favorably  
1:58:37 PM Senator Braynon motions to vote after- yay on SJR 690  
1:58:58 PM Senator Montford moves to adjourn  
1:58:59 PM Without objection, meeting is adjourned