

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES**  
**Senator Gardiner, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Monday, February 13, 2012  
**TIME:** 11:00 a.m.—12:00 noon  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Gardiner, Chair; Senator Smith, Vice Chair; Senators Altman, Benacquisto, Bogdanoff, Braynon, Diaz de la Portilla, Evers, Fasano, Flores, Joyner, Lynn, Margolis, Negron, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 2080</b> Governmental Oversight and Accountability (Identical H 7109)	OGSR/Lifeline Assistance Plan Participants; Amending provisions relating to an exemption from public records requirements for personal identifying information of Lifeline Assistance Plan participants; providing a penalty for intentional disclosure of confidential and exempt information by an officer or employee of the Public Service Commission; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc.  GO 02/07/2012 Favorable CU 02/13/2012 Favorable	Favorable Yeas 14 Nays 0
2	<b>SB 1244</b> Hays (Compare CS/H 1379, CS/CS/S 1178)	Water and Wastewater Utilities; Prohibiting the Public Service Commission from approving tiered rates that are based upon consumption by the customer; limiting the amount that certain utilities may recover as rate case expense to 50 percent of the total amount; requiring that systems be designed and operated to meet certain standards; limiting the application of the standards to water and wastewater utilities that have \$1 million or more of annual operating revenues; providing for the continuation of service if a utility's certificate of authority is revoked or suspended; creating the Study Committee on Investor-Owned Water and Wastewater Utility Systems, etc.  CU 02/13/2012 Fav/CS EP BC	Fav/CS Yeas 15 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Communications, Energy, and Public Utilities

Monday, February 13, 2012, 11:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 1158</b> Evers (Similar CS/H 695)	Development of Oil and Gas Resources; Authorizing a land management agency to enter into a public-private partnership with a business entity to develop oil and gas resources upon onshore state lands if the development yields near-term revenues for the state; providing that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity; requiring that a business entity seeking a public-private partnership contract submit a business proposal to the agency for review; providing criteria for the public-private partnership contract; requiring a proposed public-private partnership contract to be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund, etc.	Fav/CS Yeas 10 Nays 4
		CU 02/13/2012 Fav/CS EP BC	
4	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.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: CS/SB 1158

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Evers

SUBJECT: Development of Oil and Gas Resources

DATE: February 13, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	<b>Fav/CS</b>
2.			EP	
3.			BC	
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill creates a method by which a state land management agency may determine that there is an opportunity to develop oil and gas resources under those onshore state lands “to yield greater, near-term revenue returns for the state,” and may determine to enter into a public-private partnership contract with a business entity authorized to conduct business in the state to do so.

To enter into such a contract:

- A business entity must submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes, provides an estimate of the revenues that the project is expected to generate for the state, and that may suggest state land to be explored and developed.
- The land management agency shall review the business proposal “in a timely manner” and “in a manner that is consistent with contemporary industry practices.” As a practical matter, this likely will require hiring an expert consultant to do the review.
- The land management agency shall select a private partner based on the business proposal and its consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land

management agency must evaluate and select the single proposal that will provide the best value for the state.

- The contract must provide specified terms.
- For a proposed public-private partnership contract to be legally binding on the State of Florida, it must be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

The bill creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

Chapter 253, F.S., governs the acquisition, administration, and disposition of state lands.

Pursuant to s. 253.03, F.S., the Board of Trustees of the Internal Improvement Trust Fund (Board), comprised of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, is responsible for all lands owned by the state or any of its agencies, departments, boards, or commissions. The Florida Department of Environmental Protection (DEP), through its Division of State Lands (DSL), serves as staff to the Board.<sup>1</sup>

The Board is directed and authorized to enter into leases for the use, benefit, and possession of public lands by agencies which may properly use and possess them for the benefit of the state.<sup>2</sup> The DSL manages the leases and other approvals for all activities on state-owned lands the title to which is or will be vested in the Board.<sup>3</sup>

Florida has more than 3.8 million acres of conservation lands. Nearly all of this land is open for public recreation and nearly all of the lands require some form of stewardship activity. The DSL leases these lands to state agencies and local governments to manage. The DSL has leased over 500 conservation areas that include parks, preserves, forests, wildlife management areas, and other conservation and recreation areas. The DSL also leases non-conservation lands to state agencies and local governments for uses such as universities, correctional institutions, and other government buildings.

For purposes of the development and production of oil and gas, the Board is authorized to negotiate, sell, and convey leasehold estates in lands whose title is vested in any state board, department, or agency or is vested in the state and controlled and managed by any such board, department or agency.<sup>4</sup> If the Board believes there is a demand for the purchase of oil and gas leases on a portion of the land owned, controlled, or managed by a state board, department, or agency, then the board must place such oil and gas leases on the market.<sup>5</sup> The Board may designate the blocks, tracts, or parcels available for lease. A lease may be made only after public notice, and the lease form must be made publicly available at the Board's office.<sup>6</sup> For lands not already developed for oil or gas, the Board must determine in advance the amount of royalty,

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<sup>1</sup> s. 253.002(1), F.S.

<sup>2</sup> s. 253.03(2), F.S.

<sup>3</sup> <http://www.dep.state.fl.us/lands/use.htm>

<sup>4</sup> s. 253.51, F.S.

<sup>5</sup> s. 253.52, F.S.

<sup>6</sup> *Id.*

never less than one-eighth in kind or in value, and a definite rental, increasing annually after the first 2 years.<sup>7</sup>

Applicants for a lease must submit sealed bids to the Board, which may not be opened until the time and place specified in the public notice.<sup>8</sup> At a public meeting, the Board will consider any and all bids timely submitted for leasing the advertised lands and, in its discretion, may award the lease to the highest and best bidder. If the Board finds that the bids do not represent the fair value of the lease, that the execution of the lease is contrary to the public welfare, that the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may reject all bids, give notice and call for new bids, or withdraw the land from the market.<sup>9</sup>

Each lease must be for a primary term no longer than 10 years and must require that, to remain in full force and effect, operations be carried on in good faith and in a skillful and diligent manner with no cessation of more than 30 consecutive days or that oil or gas is being produced from the leased land in paying quantities. Each lease must provide for its termination in the absence of drilling or reworking operations or production of oil or gas in paying quantities.<sup>10</sup>

The Board may require a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility from each lessee of public land or mineral interest prior to the time the lessee mines, drills, or extracts petroleum, petroleum products, or gas from the land. The surety bond, irrevocable letter of credit, or other proof of financial responsibility serves as security and is to be forfeited to the Board to pay for any damages caused by mining or drilling operations performed by the lessee.<sup>11</sup>

Florida law prohibits oil and gas leases in specified areas except under certain conditions. In particular, no board or agency or the state has the authority to sell, execute, or enter into any such lease relating to any of the following lands, submerged or unsubmerged:

- Lands within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.

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<sup>7</sup> s. 253.53, F.S.

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

<sup>9</sup> s. 253.54, F.S.

<sup>10</sup> s. 253.55, F.S.

<sup>11</sup> s. 253.571, F.S. Damages include, but are not limited to, air, water, and ground pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.

- Defined submerged lands in territorial waters.<sup>12</sup>

A person wishing to conduct geophysical operations in search of oil, gas, or minerals must first obtain a permit from the Department of Environmental Protection.<sup>13</sup> The application must contain a statement, in general terms, of the location in which the operation is intended to be conducted. Any information relating to the location of the operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors must be kept confidential by the department for 10 years and exempt from the provisions of s. 119.07(1), F.S., and may not be released to the public without the consent of the person submitting the application.<sup>14</sup>

Whenever geophysical operations are conducted on state-owned mineral lands, the person conducting the operations must provide the Division of Resource Management (the Division) within DEP, acting as agent of the owner of the minerals, a copy of the noninterpreted information derived from the geophysical operations. Any information received by the Division must, upon request of the person conducting the geophysical operations, be held confidential for 10 years from the date of receipt by the division and is exempt from disclosure under any state statute.<sup>15</sup>

### III. Effect of Proposed Changes:

The bill creates an unnumbered section of the statutes to provide a method by which a state land management agency may determine, notwithstanding the provisions in chapter 253, F.S., that there is an opportunity to develop oil and gas resources under those onshore state lands “to yield greater, near-term revenue returns for the state,” and may determine to enter into a public-private partnership contract with a business entity authorized to conduct business in the state to do so.

A business entity wishing to enter into such a public-private contract must submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. In the proposal, the business entity must provide an estimate of the revenues that the project is expected to generate for the state and may suggest state land to be explored and developed under the public-private partnership contract. The proposal must be consistent with approved land management plans approved pursuant to s. 253.034, F.S.

The land management agency shall review the business proposal “in a timely manner” and “in a manner that is consistent with contemporary industry practices.” As a practical matter, this likely will require hiring an expert consultant to do the review. The geophysical seismic exploration, drilling, and production activities proposed must be of a duration consistent with industry practices.

The land management agency shall select a private partner based on the business proposal. The land management agency’s consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and

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<sup>12</sup> s. 253.61, F.S.

<sup>13</sup> ss. 377.2408 and 377.2424, F.S.

<sup>14</sup> s. 377.2408, F.S.

<sup>15</sup> s. 377.2409, F.S.

drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land management agency must evaluate and select the single proposal that will provide the best value for the state.

The public-private partnership contract must provide for:

- A period of 3 years or longer during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production;
- A selection process after geophysical operations are concluded in which the private partner may select and lease prospective parcels of state land for the purpose of exploration and production;
- The leasing of state lands identified as a result of the geophysical seismic operations, which shall be for a term of at least 5 years; and
- Negotiated royalty rates and a lease bonus.

The financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

The geophysical data acquired and the subsequent interpretation must be made available to the land management agency or its representatives for review, but shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

For a proposed public-private partnership contract to be legally binding on the State of Florida, it must be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

The bill takes effect upon becoming a law.

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

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

None.

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

None.

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

None.

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

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate; the bill may encourage additional geophysical exploration which may create additional jobs.

**C. Government Sector Impact:**

Indeterminate; it is uncertain:

- how many land management agencies may be interested in entering into public-private partnership contracts;
- how many private business entities may be interested;
- how much the expenses of agency review may be, including the apparently necessary costs of hiring an expert consultant;
- how many contracts may be entered into; and
- how much revenue may result.

**VI. Technical Deficiencies:**

The bill states that a land management agency may determine to offer to lease state land, making this determination discretionary. It further provides that the agency “shall review the business proposal” based on stated criteria and “shall select a private partner based on the business proposal.” These later provisions could be interpreted to remove agency discretion in entering into a contract, as the “shall” makes these actions mandatory. Alternatively, these provisions could be interpreted as establishing the criteria by which the decisions must be made, but still leaving the ultimate decision to the discretion of the agency.

**VII. Related Issues:**

None.

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

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

**CS by Communications, Energy, and Public Utilities on February 13, 2012,**

- requires that the proposal be consistent with approved land management plans approved pursuant to s. 253.034, F.S.; and
- deletes the requirement that the contract provide for confidentiality for a period of at least 10 years for the geophysical information or geological information developed as a result of the geophysical seismic exploration by the business entity before the selection of lease areas.

**B. Amendments:**

None.



690630

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
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The Committee on Communications, Energy, and Public Utilities (Evers) recommended the following:

**Senate Amendment**

Delete line 64  
and insert:  
generate for the state. The proposal for upland state lands must be consistent with approved land management plans approved pursuant to s. 253.034, Florida Statutes.



370768

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
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The Committee on Communications, Energy, and Public Utilities (Evers) recommended the following:

**Senate Amendment**

Delete lines 98 - 103  
and insert:  
at least 5 years; and  
(d) Negotiated royalty rates and a lease bonus.

By Senator Evers

2-00572B-12

20121158

1                   A bill to be entitled  
2           An act relating to the development of oil and gas  
3           resources; authorizing a land management agency to  
4           enter into a public-private partnership with a  
5           business entity to develop oil and gas resources upon  
6           onshore state lands if the development yields near-  
7           term revenues for the state; providing that the  
8           financial, technical, and operational risk for the  
9           exploration, development, and production of oil and  
10          gas resources is the responsibility of the private  
11          business entity; requiring that a business entity  
12          seeking a public-private partnership contract submit a  
13          business proposal to the agency for review; specifying  
14          the information to be included in the business  
15          proposal; providing criteria for the agency to use in  
16          selecting the exploration proposal by a business  
17          entity; requiring that the geophysical data and the  
18          subsequent interpretation be made available to the  
19          agency or its representative for review but remain in  
20          the possession of the business entity; providing  
21          criteria for the public-private partnership contract;  
22          requiring a proposed public-private partnership  
23          contract to be approved by the Governor and Cabinet  
24          sitting as the Board of Trustees of the Internal  
25          Improvement Trust Fund; providing an effective date.

26  
27          WHEREAS, the exploration and development of oil and gas  
28          deposits under onshore lands owned by a board, department, or  
29          agency of the state may provide the opportunity to produce

2-00572B-12

20121158

30 higher, near-term revenues to the state, and

31 WHEREAS, the monetary reward for discovering new reserves  
32 of oil and gas deposits may be significant, and

33 WHEREAS, the exploration for oil and gas deposits via  
34 modern three-dimensional, geophysical seismic methods and  
35 production, with its technological improvements, including  
36 directional and horizontal drilling, although costly, is more  
37 efficient and yields better results than older methods of  
38 exploration and production employed during the past 50 years,  
39 NOW, THEREFORE,

40  
41 Be It Enacted by the Legislature of the State of Florida:

42  
43 Section 1. (1) DUTIES; AUTHORITY.—Notwithstanding the  
44 provisions in chapter 253, Florida Statutes, if a land  
45 management agency determines that there is an opportunity to  
46 develop oil and gas resources under onshore lands owned by a  
47 board, department, or agency of this state to yield greater,  
48 near-term revenue returns for the state, the land management  
49 agency may participate with a business entity authorized to  
50 conduct business in the state in a public-private partnership  
51 contract.

52 (2) PRIVATE-PARTNER RESPONSIBILITIES.—The financial,  
53 technical, and operational risk for the exploration,  
54 development, and production of oil and gas resources is the  
55 responsibility of the private business entity.

56 (3) PROPOSAL SELECTION.—

57 (a) A business entity seeking a public-private partnership  
58 contract shall submit a business proposal that describes the

2-00572B-12

20121158

59 exploration for oil or gas resources and the development of  
60 state lands for those purposes. The business entity may nominate  
61 state land that is to be explored and developed under the  
62 public-private partnership contract. The proposal shall provide  
63 an estimate of the revenues that the project is expected to  
64 generate for the state.

65 (b) The land management agency shall review the business  
66 proposal in a timely manner and in a manner that is consistent  
67 with contemporary industry practices. The geophysical seismic  
68 exploration, drilling, and production activities proposed shall  
69 be of a duration consistent with industry practices.

70 (c) The land management agency shall select a private  
71 partner based on the business proposal. The land management  
72 agency's consideration must include, but need not be limited to,  
73 the technical quality of the exploration program proposed and  
74 the proposed timetable of geophysical and drilling activities  
75 which expedites the potential for generating revenues. If more  
76 than one entity submits a proposal for a public-private  
77 partnership for substantially the same area, the land management  
78 agency shall evaluate and select the single proposal that will  
79 provide the best value for the state.

80 (d) The geophysical data acquired and the subsequent  
81 interpretation shall be made available to the land management  
82 agency or its representatives for review during the period  
83 provided in paragraph (4) (a), but shall remain in the sole  
84 possession of the business entity until the business entity has  
85 selected the lease areas.

86 (4) PUBLIC-PRIVATE PARTNERSHIP CONTRACT.—The public-private  
87 partnership contract shall provide for:

2-00572B-12

20121158

88       (a) A period of 3 years or longer during which the private  
89 partner may explore specified state lands by geophysical seismic  
90 methods for the feasibility of oil and gas resource development  
91 and production;

92       (b) A selection process after geophysical operations are  
93 concluded in which the private partner may select and lease  
94 prospective parcels of state land for the purpose of exploration  
95 and production;

96       (c) The leasing of state lands identified as a result of  
97 the geophysical seismic operations, which shall be for a term of  
98 at least 5 years;

99       (d) Negotiated royalty rates and a lease bonus; and

100       (e) Confidentiality for a period of at least 10 years for  
101 the geophysical information or geological information developed  
102 as a result of the geophysical seismic exploration by the  
103 business entity before the selection of lease areas.

104       (5) APPROVAL OF CONTRACT.—The proposed public-private  
105 partnership contract must be approved by the Governor and  
106 Cabinet sitting as the Board of Trustees of the Internal  
107 Improvement Trust Fund in order to be legally binding on the  
108 State of Florida.

109       Section 2. This act shall take effect upon becoming a law.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/12  
Meeting Date

Topic oil & gas

Bill Number 1188<sup>5</sup>  
*(if applicable)*

Name DAVID MICA

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

Job Title Director

Address 215 S. MONROE STE 800  
*Street*  
TALLAHASSEE FL 32301  
*City State Zip*

Phone 561-6300

E-mail MICAD@API.ORG

Speaking:  For  Against  Information

Representing FLORIDA PETROLEUM COUNCIL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-13-12

Meeting Date

Topic GAS & OIL DEVELOPMENT Bill Number 1158  
(if applicable)

Name DAVID CULLEN Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address 1674 UNIVERSITY PKWY # 296 Phone 941-323-2404  
Street  
SARASOTA FL 34243 E-mail cullenaser@aol.com  
City State Zip

Speaking:  For  Against  Information

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/13/12  
Meeting Date

Topic Oil and Gas Resources

Bill Number SB 1158  
*(if applicable)*

Name Brewster Bevis

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

Job Title VP - External Relations

Address 516 W Adams St  
*Street*  
Tallahassee FL 32301  
*City State Zip*

Phone 850-224-7173

E-mail bbevis@aaf.com

Speaking:  For  Against  Information

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-13-12

Meeting Date

Topic Oil and Gas drilling

Bill Number SB 1158  
*(if applicable)*

Name Stephanie Kunkel

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

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

Address 1830 Meriadow Rd.

Phone 850-320-4208

Street

Tallahassee FL 32303

City

State

Zip

E-mail stef.kunkel@gmail.com

Speaking:  For  Against  Information

Representing Clean Water Action

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/2012  
Meeting Date

Topic oil + gas drilling on state lands Bill Number 1158  
(if applicable)

Name Julie Wraithmell Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Director of Wildlife Conservation

Address 308 N. Monroe St. Phone 850-222-2473  
Street

Tallahassee Fl 32301  
City State Zip

E-mail jwraithmell  
@audubon.org

Speaking:  For  Against  Information

Representing Audubon Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/12

Meeting Date

Topic SB 1158 / Oil + Gas Resources

Bill Number SB 1158  
*(if applicable)*

Name NOAH VALENSTEIN

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

Job Title LEGISLATIVE AFFAIRS

Address 625 N. ADAMS  
*Street*

Phone 850.222.5805

TAULAHASSEE FL 32301  
*City State Zip*

E-mail nvalenstein@everglades  
foundation.org

Speaking:  For  Against  Information

Representing EVERGLADES FOUNDATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-13-12

Meeting Date

Topic

Public/Private Partnership

Bill Number

~~1158~~ 1158

(if applicable)

Name

R. Dale Patchett

Amendment Barcode

(if applicable)

Job Title

Address

3069 Carlow Circle

Phone

850-509-9509

Street

Tallahassee, Fl. 32309

E-mail

dale.patchett@gmail.com

City

State

Zip

Speaking:

For

Against

Information

Representing

Fairways Exploration and Development

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 (10/20/11)

**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 Communications, Energy, and Public Utilities Committee

BILL: CS/SB 1244

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Hays

SUBJECT: Water and Wastewater Utilities

DATE: February 13, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	<b>Fav/CS</b>
2.			EP	
3.			BC	
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill creates a 17 member Study Committee on Investor-Owned Water and Wastewater Utility Systems. Members are appointed by the President of the Senate, the Speaker of the House of Representatives, or the Governor, or are designated as members by the bill based on another position they hold, such as Secretary of Environmental Protection or the chair of the Public Service Commission. An appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

Study committee members are to serve until the work of the committee is complete and the committee is terminated, which is June 30, 2013. They serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The committee is to meet at times and locations determined by the chair, but must meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public must be given the opportunity to speak at the meetings.

The Public Service Commission is to provide the staff, assistance, and facilities necessary for the committee to carry out its duties. Funding is to be paid from the Florida Public Service Regulatory Trust Fund.

The purpose of the study committee is to identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and to research possible solutions, including specified concerns and considerations.

The committee must prepare and submit a report detailing its findings and making specific legislative recommendations, including proposed legislation intended to implement its recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2013. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, it must submit to the appropriate agencies its report and recommendations, including proposed rules.

The bill is effect upon becoming a law.

The bill creates an unnumbered section of law.

## **II. Present Situation:**

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection (DEP) has primary responsibility for regulating the quality and supply of water.<sup>1</sup> With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC or commission) to regulate those utilities.<sup>2</sup> The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.<sup>3</sup> Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.<sup>4</sup>

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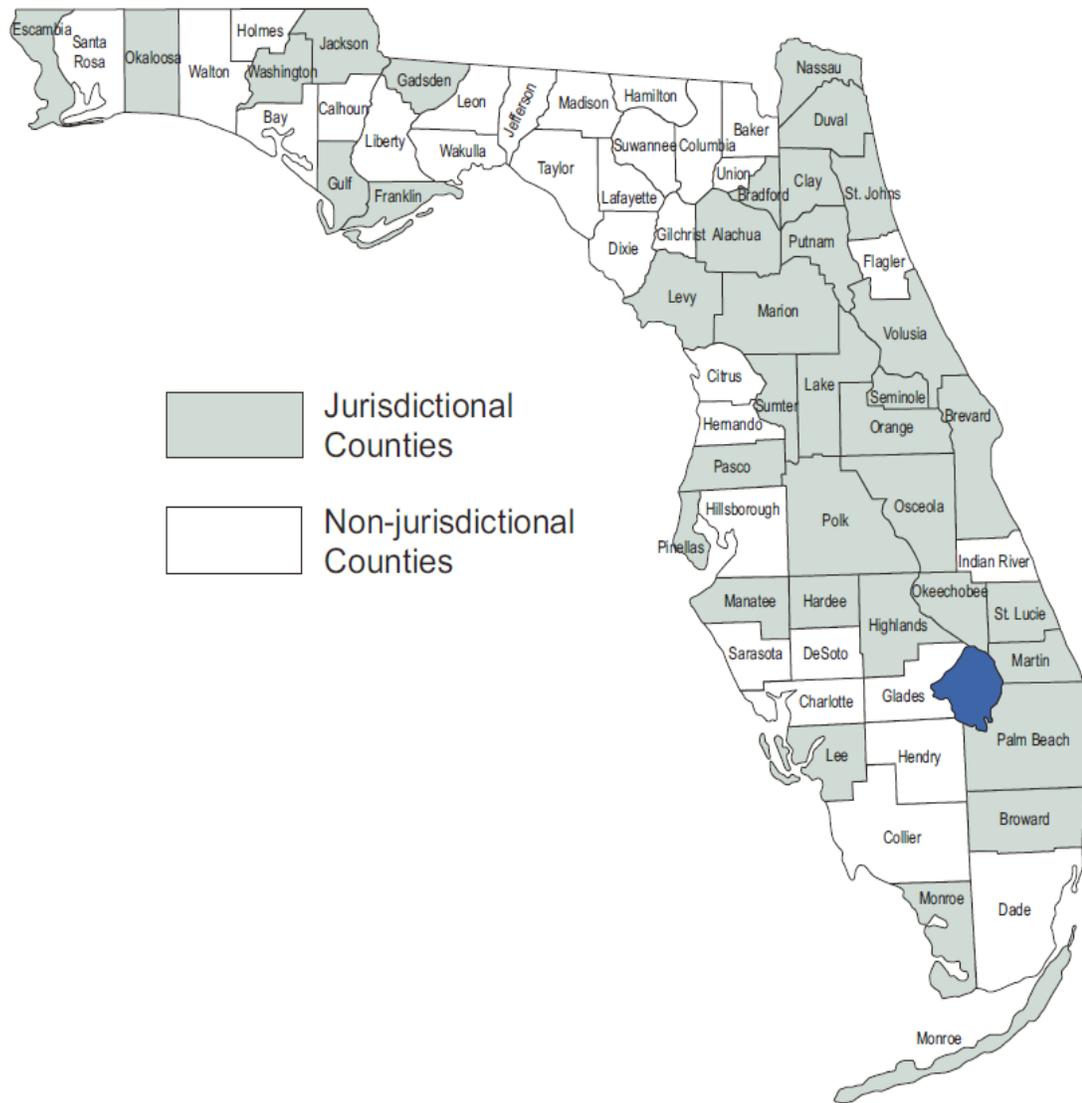
<sup>1</sup> Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.

<sup>2</sup> s. 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.

<sup>3</sup> *Id.*

<sup>4</sup> s. 367.022(2), F.S.

The map below identifies those counties in which the PSC currently exercises jurisdiction.<sup>5</sup>



For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:<sup>6</sup>

- Class A – Operating revenues greater than \$1,000,000
- Class B – Operating revenues greater than \$200,000 but less than \$1,000,000
- Class C – Operating revenues less than \$200,000

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC’s jurisdiction. These utilities serve approximately 3 to 4 percent of Florida’s population. The remaining population is served either by private utilities in non-jurisdictional counties, by

<sup>5</sup> This map can be found at <http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf>.

<sup>6</sup> Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50% of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

On September 29, 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. By letter dated September 13, 2011, to all PSC-regulated water and wastewater utilities, the PSC invited the industry stakeholders to this workshop.<sup>7</sup> The letter stated, in part:

As you are well aware, many water and wastewater utilities, particularly the small systems, struggle to achieve economies of scale, financial stability, and technical proficiency. As a result, many utilities have difficulty operating effectively and efficiently, maintaining equipment and infrastructure, complying with federal and state regulations, and providing adequate customer service at reasonable rates. This situation is likely only to worsen as infrastructure replacement needs increase and as new regulatory requirements demand increased investment in water and wastewater systems.

The letter indicated that the workshop would “provide an open forum to look at probable solutions to the many financial and environmental challenges facing utilities” and invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, “to discuss ways to increase efficiencies in the water and wastewater industry in order to hold and/or lower rates.”<sup>8</sup> In opening remarks at the workshop, PSC Chairman Art Graham indicated that the main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.<sup>9</sup>

The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.<sup>10</sup> This proposal, drafted by the PSC’s staff, provided that the study commission would be staffed by the PSC staff and have use of the PSC’s facilities. The proposal required that the study commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the study commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The study commission would terminate on June 30, 2012.

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<sup>7</sup> [http://www.psc.state.fl.us/common/controls/workshop09\\_29\\_11.pdf](http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf)

<sup>8</sup> <http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf>

<sup>9</sup> Workshop Transcript, pp.2-3. <http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf>

<sup>10</sup> <http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf>

### III. Effect of Proposed Changes:

**Section 1** creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems. The study committee is to be composed of 17 members designated and appointed as follows:

- Two Senators appointed by the President of the Senate, one of whom is to be appointed as chair by the President of the Senate.
- Two Representatives appointed by the Speaker of the House of Representatives.
- The Secretary of Environmental Protection or his or her designee, who is to be a nonvoting member of the committee.
- The chair of the Public Service Commission or his or her designee, who is to be a nonvoting member.
- A representative of a water management district appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a municipal government appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a county government appointed by the Governor.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor, who is to be a nonvoting member.
- A representative of a county health department appointed by the Governor, who is to be a nonvoting member.
- A representative of the Florida Rural Water Association appointed by the Governor.
- A representative of a small investor-owned water or wastewater utility appointed by the Governor.
- A representative of a large investor-owned water or wastewater utility appointed by the Governor.
- The Public Counsel or his or her designee.
- A customer of a Class C water or wastewater utility appointed by the Governor.
- A representative of a governmental authority that was created pursuant to chapter 163, Florida Statutes, appointed by the Governor.

An appointing authority may remove or suspend a member appointed by it for cause, including, but not limited to, failure to attend two or more meetings of the committee.

Study committee members are to serve until the work of the committee is complete and the committee is terminated. The section is to expire and the committee to terminate on June 30, 2013. A member of the study committee who is a member because of another position held by election, appointment, or employment who no longer serves in that position will be replaced on the study committee by the person replacing him or her in the position.

Members of the committee serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses, in the performance of their duties as provided in s. 112.061, Florida Statutes.

The committee is to meet at times and locations determined by the chair, but must meet a minimum of four times. At least two meetings must be held in an area that is centrally located to

utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public must be given the opportunity to speak at the meetings.

The Public Service Commission is to provide the staff, information, assistance, and facilities as are deemed necessary for the committee to carry out its duties. Funding for the committee is to be paid from the Florida Public Service Regulatory Trust Fund.

The purpose of the study committee is to identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and to research possible solutions. In addition, the committee must consider:

- The ability of a small investor-owned water or wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
- The availability of low interest loans to a small, privately owned water or wastewater utility.
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through the use of a reseller.
- Other issues that the committee identifies during its investigation.

The committee must prepare and submit a report detailing its findings and making specific legislative recommendations, including proposed legislation intended to implement its recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2013. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, it must submit to the appropriate agencies its report and recommendations, including proposed rules.

**Section 2** provides an effective date of upon becoming a law.

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

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

None.

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

None.

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

None.

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

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

**CS by Communications, Energy, and Public Utilities on February 13, 2012:**

Deletes the provisions of the original bill and replaces them with a revised study committee.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
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The Committee on Communications, Energy, and Public Utilities (Gardiner) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Study Committee on Investor-Owned Water and Wastewater Utility Systems.-

(1) There is created a Study Committee on Investor-Owned Water and Wastewater Utility Systems, which shall be composed of 17 members designated and appointed as follows:

(a) Two Senators appointed by the President of the Senate, one of whom shall be appointed as chair by the President of the Senate.



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13           (b) Two Representatives appointed by the Speaker of the  
14 House of Representatives.

15           (c) The Secretary of Environmental Protection or his or her  
16 designee, who shall be a nonvoting member of the committee.

17           (d) The chair of the Public Service Commission or his or  
18 her designee, who shall be a nonvoting member of the committee.

19           (e) A representative of a water management district  
20 appointed by the Governor.

21           (f) A representative of a water or wastewater system owned  
22 or operated by a municipal government appointed by the Governor.

23           (g) A representative of a water or wastewater system owned  
24 or operated by a county government appointed by the Governor.

25           (h) The chair of a county commission that regulates  
26 investor-owned water or wastewater utility systems appointed by  
27 the Governor, who shall be a nonvoting member of the committee.

28           (i) A representative of a county health department  
29 appointed by the Governor, who shall be a nonvoting member of  
30 the committee.

31           (j) A representative of the Florida Rural Water Association  
32 appointed by the Governor.

33           (k) A representative of a small investor-owned water or  
34 wastewater utility appointed by the Governor.

35           (l) A representative of a large investor-owned water or  
36 wastewater utility appointed by the Governor.

37           (m) The Public Counsel or his or her designee.

38           (n) A customer of a Class C water or wastewater utility  
39 appointed by the Governor.

40           (o) A representative of a governmental authority that was  
41 created pursuant to chapter 163, Florida Statutes, appointed by



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42 the Governor.

43 (2) The members shall serve until the work of the committee  
44 is complete and the committee is terminated, except that if a  
45 member no longer serves in the position required for  
46 appointment, the member shall be replaced by the individual who  
47 serves in such position.

48 (3) Members of the committee shall serve without  
49 compensation, but are entitled to reimbursement for all  
50 reasonable and necessary expenses, including travel expenses, in  
51 the performance of their duties as provided in s. 112.061,  
52 Florida Statutes.

53 (4) An appointing authority may remove or suspend a member  
54 appointed by it for cause, including, but not limited to,  
55 failure to attend two or more meetings of the committee.

56 (5) The Public Service Commission shall provide the staff,  
57 information, assistance, and facilities as are deemed necessary  
58 for the committee to carry out its duties under this section.  
59 Funding for the committee shall be paid from the Florida Public  
60 Service Regulatory Trust Fund.

61 (6) The committee shall identify issues of concern of  
62 investor-owned water and wastewater utility systems,  
63 particularly small systems, and their customers and research  
64 possible solutions. In addition, the committee shall consider:

65 (a) The ability of a small investor-owned water or  
66 wastewater utility to achieve economies of scale when purchasing  
67 equipment, commodities, or services.

68 (b) The availability of low interest loans to a small,  
69 privately owned water or wastewater utility.

70 (c) Any tax incentives or exemptions, temporary or



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71 permanent, which are available to a small water or wastewater  
72 utility.

73 (d) The impact on customer rates if a utility purchases an  
74 existing water or wastewater utility system.

75 (e) The impact on customer rates of a utility providing  
76 service through the use of a reseller.

77 (f) Other issues that the committee identifies during its  
78 investigation.

79 (7) The committee shall meet at the time and location as  
80 the chair determines, except that the committee shall meet a  
81 minimum of four times. At least two meetings must be held in an  
82 area that is centrally located to utility customers who have  
83 recently been affected by a significant increase in water or  
84 wastewater utility rates. The public shall be given the  
85 opportunity to speak at the meetings.

86 (8) By February 15, 2013, the committee shall prepare and  
87 submit to the Governor, the President of the Senate, and the  
88 Speaker of the House of Representatives a report detailing its  
89 findings pursuant to subsection (6) and making specific  
90 legislative recommendations, including proposed legislation  
91 intended to implement its recommendations. If the committee, in  
92 its report, finds that an issue may effectively be addressed  
93 through agency rulemaking, the committee shall submit to the  
94 appropriate agencies its report and recommendations, including  
95 proposed rules.

96 (9) This section expires and the committee terminates June  
97 30, 2013.

98 Section 2. This act shall take effect upon becoming a law.  
99



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

101 And the title is amended as follows:

102       Delete everything before the enacting clause  
103 and insert:

104                       A bill to be entitled  
105       An act relating to water and wastewater utilities;  
106       creating the Study Committee on Investor-Owned Water  
107       and Wastewater Utility Systems; providing for  
108       membership and terms of service; prohibiting  
109       compensation of the members; providing for  
110       reimbursement of the members for certain expenses;  
111       providing for removal or suspension of members by the  
112       appointing authority; requiring the Public Service  
113       Commission to provide staff, information, assistance,  
114       and facilities that are deemed necessary for the  
115       committee to perform its duties; providing for funding  
116       from the Florida Public Service Regulatory Trust Fund;  
117       providing duties of the committee; providing for  
118       public meetings; requiring the committee to report its  
119       findings to the Governor, the Legislature, and  
120       appropriate agencies and make certain recommendations;  
121       providing for future termination of the committee;  
122       providing an effective date.

By Senator Hays

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1                   A bill to be entitled  
2           An act relating to water and wastewater utilities;  
3           amending s. 367.081, F.S.; prohibiting the Public  
4           Service Commission from approving tiered rates that  
5           are based upon consumption by the customer; requiring  
6           the commission to find a utility's rate case expense  
7           unreasonable if the utility's quality of service is  
8           marginal or unsatisfactory; providing an exception;  
9           amending s. 367.0816, F.S.; limiting the amount that  
10          certain utilities may recover as rate case expense to  
11          50 percent of the total amount; limiting the recovery  
12          of rate case expense to one case at a time; amending  
13          s. 367.111, F.S.; requiring that systems be designed  
14          and operated to meet certain standards; requiring the  
15          commission to establish specific criteria for the  
16          evaluation of water and wastewater service; providing  
17          guidelines; requiring the commission to impose certain  
18          financial penalties against a utility that fails to  
19          meet the criteria; providing for calculating the  
20          penalty; limiting the application of the standards to  
21          water and wastewater utilities that have \$1 million or  
22          more of annual operating revenues; authorizing the  
23          commission to adopt rules; amending s. 367.165, F.S.;  
24          providing for the continuation of service if a  
25          utility's certificate of authority is revoked or  
26          suspended; requiring the commission to notify the  
27          county or counties in which a utility is located that  
28          its certificate of authority is revoked or suspended;  
29          requiring the county or counties to assume operation

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30 and control; providing that any rate structure of a  
31 water or wastewater utility which increases the rate  
32 based upon increased consumption by the customer is  
33 void and of no effect; creating the Study Committee on  
34 Investor-Owned Water and Wastewater Utility Systems;  
35 providing for membership and terms of service;  
36 prohibiting compensation of the members; providing for  
37 reimbursement of the members for certain expenses;  
38 providing for removal or suspension of members by the  
39 appointing authority; requiring the Public Service  
40 Commission to provide staff, information, assistance,  
41 and facilities that are deemed necessary for the  
42 committee to perform its duties; providing for funding  
43 from the Florida Public Service Regulatory Trust Fund;  
44 providing duties for the committee; providing for  
45 public meetings; requiring the committee to report to  
46 the Governor and Legislature its findings and make  
47 recommendation for legislative changes; providing for  
48 future termination of the committee; providing an  
49 effective date.

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

52  
53 Section 1. Subsections (1) and (7) of section 367.081,  
54 Florida Statutes, are amended to read:

55 367.081 Rates; procedure for fixing and changing.—

56 (1) Except as provided in subsection (4) or subsection (6),  
57 a utility may ~~only~~ charge only rates and charges that have been  
58 approved by the commission. However, the commission may not

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59 approve tiered rates that are based upon consumption by the  
60 customer.

61 (7) The commission shall determine the reasonableness of  
62 rate case expenses and shall disallow all rate case expenses  
63 determined to be unreasonable. No rate case expense determined  
64 to be unreasonable shall be paid by a consumer. In determining  
65 the reasonable level of rate case expense, the commission shall  
66 consider the extent to which a utility has utilized or failed to  
67 utilize the provisions of paragraph (4) (a) or paragraph (4) (b)  
68 and such other criteria as the commission establishes ~~it may~~  
69 ~~establish~~ by rule. In a rate case proceeding, if the commission  
70 finds that a utility's quality of service is marginal or  
71 unsatisfactory, the commission shall find the utility's rate  
72 case expense unreasonable unless the commission finds a  
73 compelling reason to determine that all or a portion of the  
74 expense is reasonable.

75 Section 2. Section 367.0816, Florida Statutes, is amended  
76 to read:

77 367.0816 Recovery of rate case expenses.—

78 (1) The amount of rate case expense determined by the  
79 commission to be reasonable pursuant to s. 367.081 ~~the~~  
80 ~~provisions of this chapter to be recovered through a public~~  
81 ~~utilities rate~~ shall be apportioned for recovery through the  
82 utility's rates over a period of 4 years. At the conclusion of  
83 the recovery period, the rate of the public utility shall be  
84 reduced immediately by the amount of rate case expense  
85 previously included in rates. A utility that has \$1 million or  
86 more of annual operating revenues for water or wastewater  
87 operations, including its affiliated systems in this state, may

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88 recover no more than 50 percent of the total amount of rate case  
89 expense that the commission determines is reasonable.

90 (2) A utility may recover the 4-year amortized rate case  
91 expense for only one rate case at a time. Any unamortized rate  
92 case expense for a prior rate proceeding must be removed from  
93 rates before the inclusion of any additional amortized rate case  
94 expense for the most recent rate proceeding.

95 Section 3. Subsection (2) of section 367.111, Florida  
96 Statutes, is amended, and subsection (3) is added to that  
97 section, to read:

98 367.111 Service.—

99 (2) Each utility shall provide to each customer ~~person~~  
100 ~~reasonably entitled thereto~~ such safe, efficient, and sufficient  
101 service as ~~is~~ prescribed by part VI of chapter 403 and parts I  
102 and II of chapter 373, or rules adopted pursuant to those parts;  
103 however, the thereto; but such service may shall not be less  
104 safe, less efficient, or less sufficient than is consistent with  
105 the approved engineering design of the system and the reasonable  
106 and proper operation of the utility in the public interest. Each  
107 water utility system shall be designed and operated so that the  
108 water supplied to all customers is reasonably free from  
109 objectionable taste, color, odor, or sand or other sediment. If  
110 the commission finds that a utility has failed to provide its  
111 customers with water or wastewater service that meets the  
112 standards adopted ~~promulgated~~ by the Department of Environmental  
113 Protection or the water management districts, or required by  
114 this section, the commission may reduce the utility's return on  
115 equity until the standards are met.

116 (3) Each utility shall provide to each retail customer a

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117 satisfactory quality of service. The commission shall establish  
118 specific criteria for evaluating the quality of a utility's  
119 water and wastewater service.

120 (a) Quality of service shall be deemed satisfactory,  
121 marginal, or unsatisfactory.

122 (b) Criteria shall include, but are not limited to,  
123 consideration of compliance with:

124 1. This chapter;

125 2. Relevant rules and orders of the commission, the  
126 Department of Environmental Protection, and appropriate water  
127 management districts; and

128 3. The utility's approved tariff.

129 (c) If the commission finds that a utility has failed to  
130 meet the criteria, the commission shall impose a financial  
131 penalty against the utility. The commission shall establish by  
132 rule penalties that increase proportionally to a decrease in the  
133 quality of service as determined according to the criteria.

134 1. The maximum financial penalty may not exceed an amount  
135 equal to 50 basis points on a utility's most recent rate of  
136 return on equity approved by the commission.

137 2. Any financial penalty imposed shall be refunded in a  
138 timely and equitable manner as a credit to the retail customers  
139 of the utility.

140 (d) This subsection applies to a water or wastewater  
141 utility that has \$1 million or more of annual operating revenues  
142 for water or wastewater services, including all affiliated  
143 systems located in this state.

144 (e) The utility must establish that it provides  
145 satisfactory quality of service, and failure to do so may result

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146 in a penalty. The utility may not recover from its ratepayers  
147 any expense that arises from a proceeding held pursuant to this  
148 subsection.

149 (f) The commission shall adopt rules to administer this  
150 subsection.

151 Section 4. Section 367.165, Florida Statutes, is amended to  
152 read:

153 367.165 Continuity of service in instances of revocation or  
154 suspension of certificate; abandonment.—It is the intent of the  
155 Legislature that water or wastewater service to the customers of  
156 a utility not be interrupted by the revocation or suspension of  
157 the utility's certificate of authorization or the abandonment or  
158 placement into receivership of the utility. ~~To that end:~~

159 (1) Within 30 days after the issuance of a final order of  
160 suspension or revocation of a utility's certificate of  
161 authorization, the commission shall notify the county or  
162 counties in which the utility is located of the effective date  
163 of the suspension or revocation. The county or counties shall  
164 assume operation and control of the utility pursuant to the  
165 procedures provided in chapter 74.

166 (2) (a) ~~(1)~~ A ~~No~~ person, lessee, trustee, or receiver owning,  
167 operating, managing, or controlling a utility may not shall  
168 abandon the utility without giving 60 days' notice to the county  
169 or counties in which the utility is located and to the  
170 commission. Anyone who violates ~~the provisions of this paragraph~~  
171 ~~commits subsection is guilty of~~ a misdemeanor of the first  
172 degree, punishable as provided in s. 775.082 or s. 775.083. Each  
173 day of ~~such~~ abandonment constitutes a separate offense. In  
174 addition, ~~the such~~ act of abandonment is a violation of this

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175 chapter, and the commission may impose upon the utility a  
176 penalty for each such offense of not more than \$5,000 or may  
177 amend, suspend, or revoke its certificate of authorization.~~†~~  
178 Each day of ~~such~~ abandonment without prior notice constitutes a  
179 separate offense.

180 (b)~~(2)~~ After receiving ~~such~~ notice, the county, or counties  
181 acting jointly if more than one county is affected, shall  
182 petition the circuit court of the judicial circuit in which the  
183 ~~such~~ utility is domiciled to appoint a receiver, which may be  
184 the governing body of a political subdivision or any other  
185 person deemed appropriate. The receiver shall operate the  
186 utility from the date of abandonment until ~~such time as~~ the  
187 receiver disposes of the property of the utility in a manner  
188 designed to continue the efficient and effective operation of  
189 utility service.

190 (c)~~(3)~~ The notification to the commission under paragraph  
191 (a) ~~subsection (1)~~ is sufficient cause for revocation,  
192 suspension, or amendment of the certificate of authorization of  
193 the utility as of the date of abandonment. The receiver  
194 operating the ~~such~~ utility shall ~~be considered to~~ hold a  
195 temporary authorization from the commission, and the approved  
196 rates of the utility are ~~shall be deemed to be~~ the interim rates  
197 of the receiver until modified by the commission.

198 Section 5. Effective July 1, 2012, any rate structure of a  
199 water or wastewater utility which provides for an increase in  
200 the rate based upon an increase in consumption by the customer  
201 is void and of no effect.

202 Section 6. Study Committee on Investor-Owned Water and  
203 Wastewater Utility Systems.-

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204       (1) There is created a Study Committee on Investor-Owned  
205 Water and Wastewater Utility Systems, which shall be composed of  
206 17 members designated and appointed as follows:

207       (a) Two Senators appointed by the President of the Senate,  
208 one of whom shall be appointed as chair by the President of the  
209 Senate.

210       (b) Two Representatives appointed by the Speaker of the  
211 House of Representatives.

212       (c) The Secretary of Environmental Protection or his or her  
213 designee, who shall be a nonvoting member of the committee.

214       (d) The chair of the Public Service Commission or his or  
215 her designee, who shall be a nonvoting member of the committee.

216       (e) A representative of a water management district  
217 appointed by the Governor.

218       (f) A representative of a water or wastewater system owned  
219 or operated by a municipal government appointed by the Governor.

220       (g) A representative of a water or wastewater system owned  
221 or operated by a county government appointed by the Governor.

222       (h) The chair of a county commission that regulates  
223 inventor-owned water or wastewater utility systems, who shall be  
224 a nonvoting member of the committee.

225       (i) A representative of a county health department  
226 appointed by the Governor, who shall be a nonvoting member of  
227 the committee.

228       (j) A representative of the Florida Rural Water Association  
229 appointed by the Governor.

230       (k) A representative of a small investor-owned water or  
231 wastewater utility appointed by the Governor.

232       (l) A representative of a large investor-owned water or

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233 wastewater utility appointed by the Governor.

234 (m) The Public Counsel or his or her designee.

235 (n) A customer of a Class C water or wastewater utility  
236 appointed by the Governor.

237 (o) A representative of a government authority that was  
238 created pursuant to chapter 367, Florida Statutes, appointed by  
239 the Governor.

240 (2) The members shall serve until the work of the committee  
241 is complete and the committee is terminated, except that if a  
242 member no longer serves in the position required for  
243 appointment, the member shall be replaced by the individual who  
244 serves in such position.

245 (3) Members of the committee shall serve without  
246 compensation, but are entitled to reimbursement for all  
247 reasonable and necessary expenses, including travel expenses, in  
248 the performance of their duties as provided in s. 112.061,  
249 Florida Statutes.

250 (4) The appointing authority may remove or suspend a member  
251 appointed by it for cause, including, but not limited to,  
252 failure to attend two or more meetings of the committee.

253 (5) The Public Service Commission shall provide the staff,  
254 information, assistance, and facilities as are deemed necessary  
255 for the committee to carry out its duties under this section.  
256 Funding for the committee shall be paid from the Florida Public  
257 Service Regulatory Trust Fund.

258 (6) The committee shall identify issues of concern of  
259 investor-owned water and wastewater utility systems,  
260 particularly small systems, and their customers and research  
261 possible solutions. In addition, the committee shall consider:

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262 (a) The ability of a small investor-owned water and  
263 wastewater utility to achieve economies of scale when purchasing  
264 equipment, commodities, or services.

265 (b) The availability of low interest loans to a small,  
266 privately owned water or wastewater utility.

267 (c) Any tax incentives or exemptions, temporary or  
268 permanent, which are available to a small water or wastewater  
269 utility.

270 (d) The impact on customer rates if a utility purchases an  
271 existing water or wastewater utility system.

272 (e) The impact on customer rates of a utility providing  
273 service through the use of a reseller.

274 (f) Other issues that the committee identifies during its  
275 investigation.

276 (7) The committee shall meet at the time and location as  
277 the chair determines, except that the committee shall meet a  
278 minimum of four times. At least two meetings must be held in an  
279 area that is centrally located to utility customers who have  
280 recently been affected by a significant increase in water or  
281 wastewater utility rates. The public shall be given the  
282 opportunity to speak at the meeting.

283 (8) By December 31, 2012, the committee shall prepare and  
284 submit to the Governor, the President of the Senate, and the  
285 Speaker of the House of Representatives a report detailing its  
286 findings pursuant to subsection (6) and making specific  
287 legislative recommendations.

288 (9) This section expires and the committee terminates June  
289 30, 2013.

290 Section 7. This act shall take effect July 1, 2012.



SB 1244

Dear Senate Member of the Communications, Energy and Utilities Committee,

My name is David Bussey, residing in Zephyrhills, Florida. I am an Aqua customer and a volunteer with FLOW Florida.

I would like to speak for the passage of SB 1244.

The committee may alter some of this bill, however, I would encourage you to retain those parts that are passable at this time, such as any large IOU (1) paying 50% of a rate case expense, and (2) requiring penalties for "pan-caking" of rate cases.

This type of legislation will send a strong signal to any large IOU, that they can't take advantage of "monopolized" customers in the State of Florida.

Also, the Study Committee portion of the bill will give the legislature time to become better informed as to the tremendous water problems that are coming our way over the next several years.

More needs to be done, but this is a start.

In addition, I would like to clarify the position of FLOW Florida, regarding large IOUs doing business in Florida: We welcome any and all utility operations, whether public or private. If an IOU can't provide a Quality of Service that is acceptable to their customers, they need to be strongly "encouraged" to do so, and if they can't comply, they should be denied the "privilege" to operate in this state.

Thank you.

David Bussey  
Zephyrhills, Fl  
813-713-9796  
2/10/2012

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

FEB 13 2012  
~~FEB 14 2012~~  
Meeting Date

Topic Study Committee

Bill Number SR 1244  
*(if applicable)*

Name 1 Doug MANN

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

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

Address 310 West College Ave.  
*Street*  
Tallahassee FL 32301  
*City State Zip*

Phone 222-7535

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Am. WATER Workers Ass.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-13-12

Meeting Date

Topic

WATER & WASTEWATER UTILITIES

Bill Number

1244

(if applicable)

Name

DAVID COLLEN

Amendment Barcode

391650

(if applicable)

Job Title

Address

1674 UNIV. PKWY # 296

Street

Phone

941.323.2404

SARASOTA

City

FL

State

34243

Zip

E-mail

COLLEN@SEE

@RAI.COM

Speaking:

For

Against

Information

Representing

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/20/11)

**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 Communications, Energy, and Public Utilities Committee

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BILL: SB 2080

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Lifeline Assistance Plan Participants

DATE: February 8, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	<b>Favorable</b>
2.	Wiehle	Carter	CU	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

**I. Summary:**

This bill is the result of the Governmental Oversight and Accountability Committee’s Open Government Sunset Review of the public records exemption for personal identifying information of Lifeline Assistance Plan participants. This public records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts this public records exemption. In addition, the bill creates a penalty for the unauthorized intentional disclosure of the protected information by an officer or employee of the Public Service Commission.

Section 364.107, F.S. currently provides that personal identifying information of a participant in a telecommunication carrier’s Lifeline Assistance Plan held by the Public Service Commission is confidential and exempt from disclosure under the public records requirements of s. 119.07(1), F.S., and Article 1, Section 24(a) of the Florida Constitution.

This bill substantially amends section 364.107 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24, of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

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

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* note 3.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

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

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>15</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires the Legislature to consider the following:

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<sup>8</sup> Florida Attorney General Opinion 85-62.

<sup>9</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5<sup>th</sup> DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

<sup>10</sup> *Supra* note 1.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> *Supra* note 1.

<sup>14</sup> Section 119.15, F.S.

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

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

- 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?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>17</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

### **Lifeline Assistance Plan**

The Lifeline Assistance Plan is part of a federal program designed to enable low-income households to afford basic local telephone service. Plan participants are eligible for a monthly credit against their phone bill. In Florida, the plan is administered by the Public Service Commission (PSC).<sup>18</sup> In order to enroll in the plan, a telecommunications customer must submit an application with the Public Service Commission that requires certain personal identifying information. A prospective participant must submit his or her name, address, telephone number, service provider, and the last four digits of his or her social security number.<sup>19</sup> In addition, any state agency that determines that a person is eligible for Lifeline Assistance Plan service is required to immediately forward that person's information to the PSC to ensure that the person is automatically enrolled in the Lifeline program.<sup>20</sup>

### **Public Records Exemption for Lifeline Assistance Plan participants**

Section 364.107, F.S., provides that personal identifying information of a participant in a telecommunication carrier's Lifeline Assistance Plan held by the Public Service Commission is

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<sup>17</sup> *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

<sup>18</sup> Section 364.10, F.S.

<sup>19</sup> Florida Public Service Commission, *Application for Link-Up Florida and Lifeline Assistance*, available at <http://www.psc.state.fl.us/utilities/telecomm/lifeline/LifelinePDFs/ApplicationEnglish.pdf>.

<sup>20</sup> Section 364.10(2)(g)(2), F.S.

confidential and exempt from disclosure under the public records requirements of s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution.

This public records exemption specifies that the protected information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.<sup>21</sup> The exemption also authorizes an officer or employee of a telecommunications carrier to intentionally disclose the information only as:

- Authorized by the customer;
- Necessary for billing purposes;
- Required by subpoena, court order, or other process of court;
- Necessary to disclose to an agency as defined in s. 119.011 or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline Assistance Plan or auditing a Lifeline Assistance Plan; or
- Otherwise authorized by law.

The exemption provides that any officer or employee of a telecommunications carrier who otherwise intentionally discloses the protected information commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

### **Open Government Sunset Review of Section 364.107, F.S.**

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Governmental Oversight and Accountability Committee recommended that the Legislature retain the public records exemption found in s. 364.107, F.S., which makes personal identifying information of Lifeline Assistance Plan participants held by the Public Service Commission confidential and exempt from disclosure.

The Open Government Sunset Review of this exemption concluded that there is a public necessity to continue to protect information of a sensitive personal nature concerning the participant and that without the exemption, the effective and efficient administration of this program would be impaired. The Sunset Review also recommended amending the current statute to provide that an officer or employee of the Public Service Commission who intentionally discloses the protected information in violation of the exemption's provisions is subject to the provided penalty, in addition to the officers and employees of a telecommunications carrier who are already subject to the penalty.

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

**Section 1** amends s. 364.107, F.S., reenacts and saves from repeal the public records exemption for personal identifying information for Lifeline Assistance Plan participants. It also provides that an officer or employee of the Public Service Commission who intentionally discloses the exempt information commits a misdemeanor of the second degree.

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<sup>21</sup> Federal Communications Commission (FCC) rules currently require at least twice-yearly verification that a participant still qualifies for the plan.

**Section 2** provides an effective date of October 1, 2012.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill does not expand the existing public records exemption, passage is not subject to the two-thirds vote requirement by both houses of the Legislature. The bill complies with the requirement of Article I, section 24 of the State Constitution that public records and meetings exemptions may only be addressed in legislation separate from substantive changes in law.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial 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 Governmental Oversight and Accountability

585-02462-12

20122080\_\_

1 A bill to be entitled

2 An act relating to a review under the Open Government  
3 Sunset Review Act; amending s. 364.107, F.S., relating  
4 to an exemption from public records requirements for  
5 personal identifying information of Lifeline  
6 Assistance Plan participants; providing a penalty for  
7 intentional disclosure of confidential and exempt  
8 information by an officer or employee of the Public  
9 Service Commission; saving the exemption from repeal  
10 under the Open Government Sunset Review Act; removing  
11 the scheduled repeal of the exemption; providing an  
12 effective date.

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

15  
16 Section 1. Section 364.107, Florida Statutes, is amended to  
17 read:

18 364.107 Public records exemption; Lifeline Assistance Plan  
19 participants.—

20 (1) Personal identifying information of a participant in a  
21 telecommunications carrier's Lifeline Assistance Plan under s.  
22 364.10 held by the Public Service Commission is confidential and  
23 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
24 Constitution.

25 (2) Information made confidential and exempt under  
26 subsection (1) may be released to the applicable  
27 telecommunications carrier for purposes directly connected with  
28 eligibility for, verification related to, or auditing of a  
29 Lifeline Assistance Plan.

585-02462-12

20122080\_\_

30 (3) (a) An officer or employee of a telecommunications  
31 carrier shall not intentionally disclose information made  
32 confidential and exempt under subsection (1), except as:

- 33 1. Authorized by the customer;
- 34 2. Necessary for billing purposes;
- 35 3. Required by subpoena, court order, or other process of  
36 court;
- 37 4. Necessary to disclose to an agency as defined in s.  
38 119.011 or a governmental entity for purposes directly connected  
39 with implementing service for, or verifying eligibility of, a  
40 participant in a Lifeline Assistance Plan or auditing a Lifeline  
41 Assistance Plan; or
- 42 5. Otherwise authorized by law.

43 (b) Nothing in this section precludes a telecommunications  
44 carrier from disclosing information made confidential and exempt  
45 under subsection (1) to the extent such information is otherwise  
46 publicly available or from disclosing to a customer his or her  
47 own account record through telephonic means.

48 (4)~~(e)~~ Any officer or employee of a telecommunications  
49 carrier or of the Public Service Commission who intentionally  
50 discloses information in violation of this section ~~paragraph (a)~~  
51 commits a misdemeanor of the second degree, punishable as  
52 provided in s. 775.082 or s. 775.083.

53 ~~(4) This section is subject to the Open Government Sunset~~  
54 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
55 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
56 ~~through reenactment by the Legislature.~~

57 Section 2. This act shall take effect October 1, 2012.



# CourtSmart Tag Report

Room: EL 110

Case:

Type:

Caption: Senate Communications, Energy, and Public Utilities

Judge:

Started: 2/13/2012 11:03:52 AM

Ends: 2/13/2012 11:57:58 AM Length: 00:54:07

11:03:54 AM Meeting called to order by Chairman Gardiner  
11:03:58 AM Roll call by the Administrative Assistant  
11:04:07 AM Quorum present  
11:04:37 AM Senator Hayes introduces SB 1244  
11:05:19 AM Senator Diaz de la Portilla question  
11:06:12 AM Senator Joyner question  
11:06:20 AM Statement read by Chairman Gardiner from David Bussey in support of SB 1244  
11:06:58 AM Senator Joyner comments on Mr. Bussey speaking in favor of the bill  
11:07:39 AM Speaker Doug Mann  
11:08:11 AM Amendment 391650 adopted  
11:08:41 AM Speaker David Cullen  
11:09:06 AM Senator Fasano comment  
11:09:42 AM Senator Joyner comment  
11:09:57 AM Chairman Gardiner comments  
11:10:09 AM Senator Hayes closes on SB 1244  
11:10:49 AM Roll call on SB 1244  
11:11:17 AM SB 1244 passes favorably - CS  
11:11:27 AM Senator Evers introduces SB 1158  
11:12:16 AM Questions/comments on SB 1158  
11:13:06 AM Senator Negron question  
11:14:05 AM Senator Lynn question  
11:15:14 AM Senator Evers response  
11:16:31 AM Senator Lynn question on Ocala National Forest  
11:16:44 AM Senator Evers answer  
11:17:47 AM Senator Diaz de la Portilla question  
11:18:45 AM Senator Margolis question  
11:19:00 AM Senator Sachs question  
11:20:03 AM Senator Evers question  
11:20:08 AM Senator Sachs question  
11:21:45 AM Senator Joyner question  
11:23:07 AM Senator Altman question  
11:25:07 AM Speaker David Mica representing Florida Petroleum Council  
11:28:18 AM Senator Sachs question  
11:29:44 AM Mr. Mica's response  
11:30:58 AM Senator Sachs question  
11:31:51 AM Chairman Gardiner's response to Senator Sachs question  
11:32:04 AM Senator Sachs question  
11:33:29 AM Mr. Mica's response  
11:33:38 AM Senator Smith question  
11:33:51 AM Senator Evers response  
11:34:49 AM Senator Smith question  
11:35:15 AM Senator Margolis question

11:36:32 AM Senator Altman question  
11:37:27 AM Chairman Gardiner's response  
11:37:32 AM Senator Lynn question  
11:37:54 AM Mr. Mica's response  
11:39:09 AM Senator Lynn question  
11:39:48 AM Mr. Mica's response  
11:40:58 AM Chairman Gardiner's response  
11:41:42 AM Senator Evers introduces SB 1158 Amendment 690630  
11:42:40 AM SB 1158 Amendment 690630 adopted  
11:42:47 AM Senator Evers introduces SB 1158 Amendment 370768  
11:43:17 AM Senator Diaz de la Portilla question  
11:43:53 AM Senator Evers response  
11:44:25 AM SB 1158 Amendment 370768 adopted  
11:44:36 AM Senator Lynn introduces handwritten Amendment on SB 1158  
11:45:38 AM Senator Flores question  
11:45:59 AM Senator Lynn response  
11:46:35 AM Senator Evers question  
11:46:56 AM Senator Lynn withdraws handwritten Amendment for SB 1158  
11:47:38 AM Speaker Julie Wraithmell representing Audubon Florida - in opposition  
11:51:00 AM Speaker Stephanie Kunkel representing Clean Water Action waves in opposition  
11:51:11 AM Speaker Sierra Club of Florida waves in opposition  
11:51:28 AM Speaker Brewster Beavis, Associated Industries of Florida waves in support  
11:52:31 AM Speaker David Cullen representing Sierra Club waves in opposition  
11:53:21 AM Speaker Dale Patchett, Fairways Exploration and Development in favor  
11:53:29 AM Speaker Noah Valenstein, Everglades Foundation in opposition  
11:53:40 AM Senator Lynn question  
11:53:57 AM Speaker Buster Bevis response  
11:55:09 AM Senator Smith question  
11:55:22 AM Senator Sachs question  
11:55:41 AM Senator Evers waves closure on SB 1158  
11:55:54 AM Roll call on SB 1158  
11:55:58 AM SB 1158 passes favorably - CS  
11:56:30 AM John Seay, Leg. Analyst Governmental Oversight and Accountability introduces SB 2080  
11:56:52 AM Roll call on SB 2080  
11:56:59 AM SB 2080 passes favorably  
11:57:12 AM Senator Altman and Flores votes favorably on SB 1244  
11:57:47 AM Senator Altman moves to rise