

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**  
**Senator Ring, Chair**  
**Senator Siplin, Vice Chair**

**MEETING DATE:** Tuesday, April 5, 2011  
**TIME:** 3:30 —5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Fasano, Flores, Garcia, Latvala, Margolis, Montford, Norman, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1382</b> Bennett (Compare CS/H 993)	Rulemaking; Requires that an agency include in its notice of intended rulemaking a statement as to whether the proposed rule will require legislative ratification. Clarifies that certain proposed rules are adopted only when ratified by the Legislature. Reduces the time before an agency files a rule for adoption within which the agency must notify the person who submitted a lower cost alternative and the Administrative Procedures Committee, etc.	GO 04/05/2011 BC
2	<b>SB 898</b> Bennett (Identical H 4167)	Faith-based & Community-based Advisory Council; Abrogates the repeal of provisions governing the Florida Faith-based and Community-based Advisory Council.	GO 04/05/2011 CF CA
3	<b>CS/SB 520</b> Military Affairs, Space, and Domestic Security / Bennett (Similar CS/H 465)	State Memorials; Establishes the Florida Veterans' Hall of Fame on the Plaza Level of the Capitol Building. Provides for the Department of Veterans' Affairs to administer the Florida Veterans' Hall of Fame. Authorizes the department to establish a nomination and selection process and an induction ceremony, etc.	MS 03/17/2011 Fav/CS GO 04/05/2011 BC
4	<b>SB 502</b> Oelrich (Identical H 645)	State Symbols; Designates the Barking Tree Frog as the official state amphibian.	EP 03/17/2011 Favorable GO 04/05/2011 RC

**COMMITTEE MEETING EXPANDED AGENDA**Governmental Oversight and Accountability  
Tuesday, April 5, 2011, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 1310</b> Oelrich	911 Emergency Telephone Calls; Provides that any release of an oral recording of a 911 emergency transmission be digitally modified in order to protect the personal identity of any person requesting emergency services or reporting an emergency.	GO 04/05/2011 BC
6	<b>SB 874</b> Hays (Similar H 597)	Public Records/Emergency Notification Information; Provides an exemption from public records requirements for information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Provides for retroactive effect of the exemption. Provides for future legislative review and repeal of the exemption. Provides a statement of public necessity.	CA 03/07/2011 Favorable GO 04/05/2011 BC
7	<b>SB 996</b> Simmons (Identical CS/H 87)	Communications Among Branches of State Government; Cites this act as the "Communication of Judicial Opinions Act." Requires the clerks of the State Supreme Court and district courts of appeal to transmit certain judicial opinions to the Governor, the President of the Senate, and the Speaker of the House of Representatives within a specified time.	JU 03/22/2011 Favorable GO 04/05/2011 BC
8	<b>SB 704</b> Sachs (Identical H 765)	Special Observances/Purple Heart Day; Designates August 7 of each year as "Purple Heart Day."	MS 03/17/2011 Favorable GO 04/05/2011 RC
9	<b>CS/CS/SB 930</b> Children, Families, and Elder Affairs / Judiciary / Lynn (Similar CS/CS/H 647)	Protection of Volunteers; Clarifies that in order to fall under the protection of the Florida Volunteer Protection Act, a person performing a service for a nonprofit organization may not receive compensation from the nonprofit organization for that service, regardless of whether the person is receiving compensation from another source. Provides an exception. Provides for application of the act.	JU 03/14/2011 Fav/CS CF 03/22/2011 Fav/CS GO 04/05/2011

**COMMITTEE MEETING EXPANDED AGENDA**Governmental Oversight and Accountability  
Tuesday, April 5, 2011, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>SB 604</b> Criminal Justice (Similar H 7161)	OGSR/Concealed Weapons or Firearms; Amends provision which provides an exemption from public records requirements for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm. Saves the exemption from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemption.  CJ 03/09/2011 Favorable GO 04/05/2011 RC	
11	<b>CS/SB 1616</b> Higher Education / Flores (Similar H 1451)	Dan Marino Foundation Florida Vocational College; Establishes the Dan Marino Foundation Florida Vocational College in Broward County as a public residential postsecondary school for certain students who have developmental disabilities. Provides funding for the school through the Department of Education. Requires that the Auditor General conduct annual audits of the school's accounts and records. Creates a board of trustees. Requires that all employees and applicants for employment with the board undergo personnel screening and security background investigations, etc.  HE 03/22/2011 Fav/CS GO 04/05/2011 BC	
12	<b>SJR 1664</b> Bogdanoff (Compare HJR 1097)	Senate Confirmation/Appointments to Supreme Court; Proposes an amendment to the State Constitution to require Senate confirmation of appointments to the office of justice of the Supreme Court.  JU 03/22/2011 Not Considered JU 03/28/2011 Favorable GO 04/05/2011 RC	
13	<b>SB 374</b> Bogdanoff (Compare H 191)	Health and Human Services Contracts; Establishes the Health and Human Services Contract Resource Center to be administratively housed in the Department of Management Services. Provides the center's duties. Establishes a board of trustees composed of certain agency heads. Provides for an executive director appointed by the Governor. Exempts services provided by an eligible lead community-based provider from being subject to the state competitive bidding process, etc.  GO 04/05/2011 CF BC	

**COMMITTEE MEETING EXPANDED AGENDA**Governmental Oversight and Accountability  
Tuesday, April 5, 2011, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	<b>SB 106</b> Ring (Similar CS/H 121)	Public Records; Creates an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous. Creates such exemption for information identifying a donor or prospective donor to the direct-support organization of the Legislative Research Center and Museum at the Historic Capitol. Provides for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act, etc.	CA 01/11/2011 Favorable CM 03/09/2011 Fav/1 Amendment GO 04/05/2011
15	<b>SB 102</b> Ring (Identical H 31)	Office of the Chief Technology Officer; Creates the Office of the Chief Technology Officer within the Department of Financial Services. Requires that said officer be appointed by the Governor and Cabinet. Requires that the office be composed of three divisions. Requires that the Chief Technology Officer develop a multiyear plan of action for the purpose of meeting specified objectives, etc.	GO 03/30/2011 Not Considered GO 04/05/2011 BC
16	<b>SB 1182</b> Ring (Similar H 7155)	State Board of Administration; Authorizes the board to invest the assets of a governmental entity in the Local Government Surplus Funds Trust Fund without a trust agreement with that governmental entity. Provides that certain investments made by the board under a trust agreement are subject only to the restrictions and limitations contained in the trust agreement. Corrects cross-references. Clarifies provisions prohibiting certain conflicts of interest by investment advisers and managers retained by the board.	GO 03/23/2011 Temporarily Postponed GO 03/30/2011 Not Considered GO 04/05/2011 BC

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability  
Tuesday, April 5, 2011, 3:30 —5:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	<b>SB 2090</b> Governmental Oversight and Accountability (Similar H 7223)	OGSR/Submission of Competitive Solicitation; Amends provisions which provide an exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to a competitive solicitation. Expands the public records exemption by extending the duration of the exemption. Amends provisions which provide an exemption from public meetings requirements for meetings at which a negotiation with a vendor is conducted and which provides an exemption from public records requirements for recordings of exempt meetings, etc.  GO 04/05/2011 If received BC	

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Consideration of proposed committee bill:

- |    |                 |  |  |
|----|-----------------|--|--|
| 18 | <b>SPB 7230</b> | Review Under the Open Government Sunset Review Act; Transfers, renumbers, and amends provisions which provide exemptions from public records requirements for the State Board of Administration. Specifies information that does not constitute proprietary confidential business information held by the State Board of Administration. Requires the State Board of Administration to maintain a written list of records covered under a verified, written declaration. Conforms cross-references. Makes editorial changes. Removes the scheduled repeal of the exemptions. Conforms cross-references, etc. |  |
|----|-----------------|--|--|

**(Preliminary Draft Available - final draft will be made available at least 48 hours prior to the meeting)**



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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

In title, delete line 6  
and insert:  
clarifying that certain proposed rules are effective

**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 Governmental Oversight and Accountability Committee

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BILL: SB 1382

INTRODUCER: Senator Bennett

SUBJECT: Agency Rulemaking

DATE: April 3, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill refines certain agency rulemaking procedures under the Administrative Procedures Act by referencing the legislative ratification now required by s. 120.541(3), F.S. The bill also revises certain rulemaking timeframes to conform those times with other periods required in the rulemaking statute, s. 120.54, F.S.

This bill substantially amends the following sections of the Florida Statutes: 120.54, 120.541, and 120.56.

**II. Present Situation:**

**The Administrative Procedure Act**

Because administrative agencies have been granted extensive investigative, rulemaking, and adjudicating powers, statutes such as the Florida Administrative Procedure Act (APA) have been adopted to provide parties in administrative proceedings with procedural protection and due process.<sup>1</sup> The APA allows individuals who feel that their interests are being or will be affected by the preliminary decisions of agencies to challenge those decisions.<sup>2</sup> The central purpose of the APA is to provide the basic fairness that should surround all governmental activity, such as:

- The opportunity for adequate and full notice of agency activities;
- The right to present viewpoints and to challenge the views of others;

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<sup>1</sup> 2 FLA. JUR 2D *Administrative Law* s. 1 (2007).

<sup>2</sup> Judge Linda M. Rigot, *Administrative Law: A Meaningful Alternative to Circuit Court Litigation*, 75 FLA. B.J. 14, 14 (2001); see also 2 FLA. JUR 2D *Administrative Law* s. 5 (2007).

- The right to develop a record which is capable of court review;
- The right to locate precedent and have it applied; and,
- The right to know the factual bases and policy reasons for agency action.<sup>3</sup>

The Division of Administrative Hearings (DOAH), which consists of an independent group of administrative law judges (ALJs), conducts hearings under ch. 120, F.S., when certain agency decisions, e.g., rules and determinations of a party's substantial interest, are challenged by substantially affected persons.<sup>4</sup>

### **House Bill 1565**

HB 1565 was passed during the 2010 regular session but was vetoed by Governor Crist. On November 16, 2010, the Legislature in special session voted to override that veto and the bill became law as Chapter 2010-279. The law created new s. 120.541(3), F.S., requiring submission of rules with certain economic impacts for ratification by the Legislature before they may go into effect. The law also lengthened the time (from 21 days to 45 days) before an agency could adopt a rule after revising a required economic analysis and lengthened the time (from 20 days to 44 days) for a person to challenge the validity of a rule after the agency prepared the required economic analysis. These changes created a potential timing conflict with existing provisions which only allowed 21 days before adopting a rule if the economic analysis was not revised.

### **Agency Rulemaking**

Under current law, an agency begins the formal rulemaking process by filing a notice of the proposed rule.<sup>5</sup> The notice is published by the Department of State in the Florida Administrative Weekly<sup>6</sup> and must provide certain information, including the text of the proposed rule, a summary of the statement of estimated regulatory costs (SERC), if one is prepared, and how a party may request a public hearing.

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”<sup>7</sup> Prior to the 2010 revision the law provided only two contingencies<sup>8</sup> to “effectiveness;” legislative ratification became the third.<sup>9</sup>

Rules normally must be filed for adoption no earlier than 28 days nor later than 90 days after the agency publishes the notice of proposed rule; the later deadline may change depending on

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<sup>3</sup> 2 FLA. JUR 2D *Administrative Law* s. 5 (2007) (quoting *Singer Island Civic Ass'n, Inc. v. State Dep't of Environmental Regulation*, 636 So. 2d 723, 725 (Fla. 4th DCA 1994)).

<sup>4</sup> Rigot, *supra* note 2, at 14.

<sup>5</sup> Section 120.54(3)(a)1., F.S.

<sup>6</sup> Section 120.55(1)(b)2., F.S.

<sup>7</sup> Section 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption.

<sup>8</sup> Id. A rule became effective either 20 days after being filed for adoption or on a date specified by statute. Rules not required to be filed with the Department of State became effective when adopted by the agency head or on a date specified by rule or statute.

<sup>9</sup> Section 120.541(3), F.S.

different factors.<sup>10</sup> To ensure completion of the rulemaking process, the APA provides different times in which a party may challenge a proposed rule.<sup>11</sup> If an agency is required to prepare a SERC the rule cannot be filed for adoption until 21 days after the SERC is provided to parties and made publicly available.<sup>12</sup>

The 2010 revision did not alter this requirement but created new provisions delaying adoption of a rule for 45 days after the agency made a *revised* SERC available<sup>13</sup> and providing 44 days for a party to challenge a proposed rule.<sup>14</sup> These revised times conflict with the various 21 day timeframes provided for different aspects of rulemaking, such as filing a rule for adoption, requesting a hearing and submitting materials responding to the rulemaking notice,<sup>15</sup> or filing notices of substantial changes due to an objection from the Joint Administrative Procedures Committee.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill would require an agency's statutory notice of proposed rulemaking to include a statement as to whether legislative ratification will be required before the rule goes into effect. The bill also expressly includes legislative ratification in the statutory description of those contingencies affecting when a rule becomes effective.

The bill resolves the timing conflicts created in the 2010 law reversing the changes as follows:

- Instead of allowing 45 days, the bill requires a revised SERC be provided at least 21 days before the rule is filed for adoption, conforming the time with that for adopting a rule after providing an original SERC.<sup>17</sup>
- The bill reverts the time to 20 days for challenging a proposed rule after the agency provides a SERC, requiring the challenge be brought during the waiting period before the rule may be filed for adoption.

The bill takes effect July 1, 2011.

### IV. Constitutional Issues:

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

None.

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<sup>10</sup> Section 120.54(3)(e)2., F.S. The 90 day period is extended for an additional 21 days if a party submits a lower cost regulatory alternative to a proposed rule and the agency is compelled to prepare a SERC if one was not previously done. S. 120.541(1)(a), as amended by Ch. 2010-279, s. 2, Laws of Florida.

<sup>11</sup> Section 120.56(2)(a), F.S. Originally, a party had 20 days after a SERC or revised SERC was made available in which to challenge a proposed rule.

<sup>12</sup> Section 120.54(3)(e)2., F.S.

<sup>13</sup> Section 120.541(1)(d), F.S.

<sup>14</sup> Section 120.56(2)(a), F.S., as amended by Ch. 2010-279, s. 3, Laws of Florida.

<sup>15</sup> Section 120.54(3)(c)1., F.S.

<sup>16</sup> Section 120.54(d)1., F.S.

<sup>17</sup> Section 120.54(3)(e)2., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Requiring disclosure in the rulemaking notice of whether the proposed rule may require legislative ratification will have an indeterminate but probably insignificant impact on agency expenditures.

**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.

**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 Governmental Oversight and Accountability Committee

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BILL: SB 898

INTRODUCER: Senator Bennett

SUBJECT: Faith-based & Community-based Advisory Council

DATE: April 1, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mason	Roberts	GO	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill removes the expiration subsection of section 14.31, Florida Statutes, which abolishes the council on June 30, 2011, unless the council is reviewed and saved from repeal from the Legislature.

This bill repeals subsection (8) of section 14.31, Florida Statutes.

**II. Present Situation:**

The Florida Faith-based and Community-based Advisory Council was established on July 1, 2006 to provide advice on the development of broadly based secular and faith-based engagements in the delivery of important state services and to report to the Governor and the Legislature on these recommendations. It was the intent of the Legislature that “faith-based and community-based organizations work cooperatively with government entities in order to deliver services more effectively.”<sup>1</sup>

The Florida Faith-based and Community-based Advisory Council was established and assigned to the Executive Office of the Governor under s. 20.02, Florida Statutes. The council is a 25-member advisory council which may include representatives from various faiths, faith-based organizations, community-based organizations, foundations, corporations, and municipalities.<sup>2</sup> The Governor appoints 17 members, the President of the Senate appoints 4 members, and the

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<sup>1</sup> 14.31(2), F.S.

<sup>2</sup> 14.31(3)(b), F.S.

Speaker of the House of Representatives appoints 4 members.<sup>3</sup> The council must meet at least once per quarter and may notice and hold its meetings electronically and through teleconferencing.<sup>4</sup>

The duties of the council are to review and recommend in a report to the Governor and the Legislature.<sup>5</sup>

- How faith-based and community-based organizations can best compete with other organizations for the delivery of state services, regardless of an organization's orientation, whether faith-based or secular;
- How best to develop and coordinate activities of faith-based and other community programs and initiatives, enhance such efforts in communities, and seek such resources, legislation, and regulatory relief as may be necessary to accomplish these objectives;
- How best to ensure that state policy decisions take into account the capacity of faith-based and other community initiatives to assist in the achievement of state priorities;
- How best to identify and promote best practices across state government relating to the delivery of services by faith-based and other community organizations;
- How best to coordinate public awareness of faith-based and other community organizations, such as demonstration pilot programs or projects, public-private partnerships, volunteerism, and special projects;
- How best to encourage private charitable giving to support faith-based and community initiatives;
- How best to bring concerns, ideas, and policy options to the Governor and Legislature for assisting, strengthening, and replicating successful faith-based and other community programs;
- How best to develop and implement strategic initiatives to strengthen the institutions of families and communities in this state;
- How best to showcase and herald innovative grassroots nonprofit organizations and civic initiatives;
- How best to eliminate unnecessary legislative, regulatory, and other bureaucratic barriers that impede effective faith-based and other community efforts to address social problems;
- How best to monitor implementation of state policy affecting faith-based and other community organizations; and
- How best to ensure that the efforts of faith-based and other community organizations meet objective criteria for performance and accountability.

In providing the recommendations noted above, the council is expressly prohibited from making any recommendation that is in conflict with the Establishment Clause of the First Amendment of the United States Constitution or the public funding provision of s. 3, Art. I of the State Constitution.<sup>6</sup>

In the 2010 Report to the Governor and the Legislature, the council established the following subcommittees: Recognition and Best Practices, Education and Evaluation, and Disaster

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<sup>3</sup> 14.31(3)(c), F.S.

<sup>4</sup> 14.31(4), F.S.

<sup>5</sup> 14.31(5), F.S.

<sup>6</sup> 14.31(6), F.S.

Recovery. The Recognition and Best Practices subcommittee will identify and recognize those faith-based and community-based organizations presently engaged in effective practices in cooperation with government entities and look at models to replicate their efforts of success. The Education and Evaluation subcommittee will support the final year of the Compassion Florida initiative to train and give technical assistance to faith-based and community-based groups with the continued funding of a major federal grant to Volunteer Florida Foundation to perform this service. The Disaster Recovery subcommittee will assist as needed with communication, planning, and support of the state's disaster response.<sup>7</sup>

In its report, the council recommended the following: The Recognition and Best Practices subcommittee should study public-private partnerships and their effective operation, providing statewide recognition and potential replication; the Education and Evaluation subcommittee should study public-private partnerships and their effective operation, offering technical assistance; and the Disaster Recovery subcommittee should activate as needed in the event of a disaster and participate as requested in disaster planning events.<sup>8</sup>

Over the years, the council has also improved the system for contract opportunities for Florida non-profits; held face-to-face meetings with key mayoral leaders to learn about effective partnerships; developed a toolkit for community leaders to establish more effective partnerships; built a strong network of faith-based organizations, community groups, foundations, civic, grassroots and state leaders; conducted regional training for state agencies to encourage their participation; established Neighbors to the Rescue; created and maintained over 40 long-term recovery organizations; launched the Compassion Florida program; and collaborated with the Governor's Office of Adoption and Child Protection through the Child Abuse Prevention and Permanency Council.<sup>9</sup>

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

The bill removes the expiration subsection of section 14.31, Florida Statutes, which abolishes the council on June 30, 2011, unless the council is reviewed and saved from repeal from the Legislature. Therefore, the council will not expire and will have perpetual existence.

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

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

None.

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

None.

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<sup>7</sup> 2010 Annual Report & Recommendations by the Florida Faith-Based and Community-Based Advisory Council (Feb. 1, 2010), available at <http://www.floridasfoundation.org/pdfs/recommendations.pdf> (last visited Apr. 1, 2011).

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

<sup>9</sup> *Id.*

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

Delete line 47  
and insert:  
with the annual commemoration of Veterans' Day. The initial  
nomination review committee shall be chaired by Col. Bruce J.  
Host, USAF, Ret., in cooperation with the Florida Veterans  
Foundation.

**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 Governmental Oversight and Accountability Committee

**BILL:** CS/SB 520

**INTRODUCER:** Senate Military Affairs, Space, and Domestic Security Committee and Senator Bennett

**SUBJECT:** State Memorials

**DATE:** March 31, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fleming</u>	<u>Carter</u>	<u>MS</u>	<b>Fav/CS</b>
2.	<u>Mason</u>	<u>Roberts</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill creates the Florida Veterans Hall of Fame (Hall of Fame), which is to be administered by the Department of Veterans' Affairs (DVA). This bill directs the Department of Management Services (DMS) to set aside an area for the Hall of Fame inside the Capitol Building adjacent to the existing Medal of Honor Wall on the Plaza Level. DMS must consult with DVA regarding the design and theme of the area.

This bill creates section 265.003 of the Florida Statutes.

**II. Present Situation:**

**Veterans in Florida**

Florida has the third largest population of veterans in the nation with more than 1.6 million.<sup>1</sup> Only California and Texas have larger populations of veterans. Florida has more than 189,000

<sup>1</sup> Florida Department of Veterans' Affairs. 2009-10 Annual Report. Available at: [http://www.floridavets.org/pdf/ann\\_rprt\\_10.pdf](http://www.floridavets.org/pdf/ann_rprt_10.pdf)

veterans from World War II, the largest number in the nation. In addition, more than 192,000 Operation Enduring Freedom, Operation Iraqi Freedom and Operation New Dawn service members and veterans claim Florida as their home of record.

### **Veterans Halls of Fame in Other States**

Four other states have Veterans Halls of Fame: Ohio, Arizona, Connecticut, and New York. The primary goals for this type of Hall of Fame appear to be recognizing the post-military achievements of outstanding veterans and spotlighting the contributions of veterans to their communities, states and nation.

Ohio's Veterans Hall of Fame was established in 1992.<sup>2</sup> Since its inception, more than 400 veterans have been inducted.<sup>3</sup> A committee of veterans serves as advisors and selects approximately 20 inductees annually from nominations solicited from all citizens of Ohio throughout the year.

Arizona's Veterans Hall of Fame, created in 2001, is an extension of the Hall of Fame created by the Arizona Department of the Disabled American Veterans in 1978.<sup>4</sup> Since the inception in 2001, 223 veterans have been inducted. A committee of veterans serves as advisors and selects inductees annually from nominations solicited from all veterans' organizations and citizens of Arizona throughout the year.

Connecticut's Hall of Fame was created by an Executive Order by Governor M. Jodi Rell in 2005.<sup>5</sup> As of December 2010, 51 veterans had been inducted. An Executive Committee, comprised of the Commissioner of the state's Department of Veterans' Affairs, Adjutant General of the Connecticut National Guard, three appointees selected by the Governor, and two appointees from the legislative branch, reviews nominations and submits recommendations for induction to the Governor.<sup>6</sup>

New York's Hall of Fame was created in 2005.<sup>7</sup> The law provided for the creation of an 18 member New York State Veterans' Hall of Fame Council, whose purpose was to establish a permanent Veterans' Hall of Fame and a traveling exhibit, as well as promulgate the rules and regulations for the operation of the Veterans' Hall of Fame, including the manner of choosing

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<sup>2</sup> Ohio Veterans' Hall of Fame. *History*. Available at: [http://dvs.ohio.gov/veterans\\_hall\\_of\\_fame/history.aspx](http://dvs.ohio.gov/veterans_hall_of_fame/history.aspx). Site last visited March 31, 2011.

<sup>3</sup> Ohio Veterans' Hall of Fame. *Inductees*. Available at: [http://dvs.ohio.gov/veterans\\_hall\\_of\\_fame/inductees.aspx](http://dvs.ohio.gov/veterans_hall_of_fame/inductees.aspx). Site last visited March 31, 2011.

<sup>4</sup> Arizona Veterans Hall of Fame Society. *History*, Available at: [http://www.avhof.org/content.aspx?page\\_id=22&club\\_id=501042&module\\_id=20188](http://www.avhof.org/content.aspx?page_id=22&club_id=501042&module_id=20188). Site last visited March 31, 2011.

<sup>5</sup> Connecticut Veterans Hall of Fame. *History* (Updated December 2010), Available at: [http://www.ct.gov/ctva/lib/ctva/THE\\_CONNECTICUT\\_VETERANS\\_HALL\\_OF\\_FAME.pdf](http://www.ct.gov/ctva/lib/ctva/THE_CONNECTICUT_VETERANS_HALL_OF_FAME.pdf) Site last visited March 31, 2011.

<sup>6</sup> Connecticut Veterans' Hall of Fame Nomination Packet (Class of 2011), Available at: [http://www.ct.gov/ctva/lib/ctva/veterans\\_hall\\_of\\_fame\\_nomination\\_packet\\_2011.pdf](http://www.ct.gov/ctva/lib/ctva/veterans_hall_of_fame_nomination_packet_2011.pdf). Site last visited March 31, 2011.

<sup>7</sup> The provisions may be found in New York's Executive Laws, Article 17 § 365. See Laws of New York – search results for "Veterans Hall of Fame", available at: <http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=+&LIST=SEA+&BROWSER=EXPLORER+&TOKEN=49253296+&TARGET=VIEW>. Site last visited March 31, 2011.

nominees for induction and inductees. The council was directed to complete its work within three years. It appears that New York is not utilizing the Hall of Fame format found in its laws; however, the New York State Senate does have a Hall of Fame program to recognize outstanding veterans.<sup>8</sup>

### **Halls of Fame in Florida**

The Legislature has established Halls of Fame in Florida. Examples of Halls of Fame previously created include the Florida Civil Rights Hall of Fame,<sup>9</sup> Florida Women's Hall of Fame,<sup>10</sup> Florida Artists Hall of Fame,<sup>11</sup> Florida Educator Hall of Fame,<sup>12</sup> and Florida Sports Hall of Fame.<sup>13</sup>

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

This bill creates the Florida Veterans Hall of Fame (Hall of Fame). The Hall of Fame is to be administered by the Department of Veterans' Affairs (DVA). This bill directs the Department of Management Services (DMS) to set aside an area on the Plaza Level of the Capitol Building along the northeast front wall for the Hall of Fame. DMS must consult with DVA regarding the design and theme of the area.

DVA must annually accept nominations for persons to be considered for the Hall of Fame and transmit its recommendations to the Governor and the Cabinet, who will select the nominees to be inducted. Each veteran selected will have his or her name placed on a plaque in the Hall of Fame.

DVA is to give preference to veterans who:

- Were born in Florida or adopted Florida as their home state or base of operation; and,
- Have made a significant contribution to Florida in civic, business, public service, or other pursuits.

DVA may establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

This bill states that the Hall of Fame will not require the appropriation of state funds. The Florida Veterans Foundation, DVA's Direct Support Organization, has indicated it will be responsible for the initial and ongoing operation and maintenance costs of the Hall of Fame.

This bill provides an effective date of July 1, 2011.

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<sup>8</sup> New York State . Senate Veterans' Hall of Fame. Available at <http://www.nysenate.gov/veterans-hall-of-fame>. Site last accessed March 31, 2011.

<sup>9</sup> Section 760.065, F.S.

<sup>10</sup> Section 265.001, F.S.

<sup>11</sup> Section 265.2865, F.S.

<sup>12</sup> Chapter 98-281, s. 13, Laws of Florida; s. 231.63, F.S. (1998 Supp.).

<sup>13</sup> Section 15.051, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

According to the DVA, the Florida Veterans Foundation, a 501(c)(3) organization, has indicated it will be responsible for initial and ongoing operation and maintenance costs of the Hall of Fame. The Department of Management Services has stated there is no fiscal impact to their agency.

**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 Military Affairs, Space, and Domestic Security on March 17, 2011:**

Removes the requirement for the Department of Management Services to set aside an area of the Plaza Level of the Capitol Building adjacent to the existing Medal of Honor Wall and directs them to set aside an area along the northeast front wall instead.

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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**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 Governmental Oversight and Accountability Committee

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BILL: SB 502

INTRODUCER: Oelrich

SUBJECT: State Symbols

DATE: March 31, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiggins</u>	<u>Yeatman</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Mason</u>	<u>Roberts</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill designates the Barking Tree Frog as the official state amphibian.

The bill creates section 15.03865 of the Florida Statutes.

**II. Present Situation:**

Currently, no amphibian is designated as the official state amphibian.

Chapter 15, F.S., designates official state emblems. To date, there are designations for a state tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museum, soil, fiddle contest, band, sports hall of fame, pie, maritime museum, and horse.

The Barking Tree Frog is one of the largest frogs found in the United States and is found primarily in Florida.<sup>1</sup> Because of their specially developed foot pads, Barking Tree Frogs spend the majority of their time climbing trees and the walls of aquariums, but they can also be found burrowing under tree roots.<sup>2</sup> The color of the Barking Tree Frog varies greatly: from lime green

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<sup>1</sup> Barking Tree Frog Stats & Facts, <http://animal.discovery.com/guides/reptiles/frogs/barkingtreefrog.html> (last visited March 31, 2011).

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

to brown with some yellow and gold coloring on its throat, belly, and inside its hind legs.<sup>3</sup> The Barking Tree Frog gets its name from the low-pitch noise it makes during the rainy season, which sounds similar to a dog's bark, or even a honking goose.<sup>4</sup> This sound is only made by the males in the species.<sup>5</sup>

### III. Effect of Proposed Changes:

**Section 1** creates section 15.03865, of the Florida Statutes, to designate the Barking Tree Frog as the official state amphibian.

**Section 2** provides that this act shall take effect July 1, 2011.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State maintains a list on its website of all official state symbols.

### VI. Technical Deficiencies:

None.

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

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

<sup>5</sup> *Id.* To hear the Barking Tree Frog, please visit: [http://www.youtube.com/watch?v=W4vdf3B3\\_bY&feature=related](http://www.youtube.com/watch?v=W4vdf3B3_bY&feature=related).

**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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**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 Governmental Oversight and Accountability Committee

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BILL: SB 1310

INTRODUCER: Senator Oelrich

SUBJECT: E911 Call Recordings

DATE: April 3, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

Current law provides a public-records exemption for the name, address, telephone number, or personal information about, or information that may identify, any person requesting emergency services or reporting an emergency.<sup>1</sup> The exemption applies to such information in any record or recording, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency. The confidential and exempt information may be shared only with another public safety agency.

This bill amends that public-records exemption to provide that if an oral recording of a 911 emergency transmission is requested, the recording shall be digitally modified in order to protect the personal identity of any person requesting emergency services or reporting an emergency.

This bill substantially amends s. 365.171, F.S.

**II. Present Situation:**

**Public-Records Law**

Article I, s. 24(a) of the State Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of

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<sup>1</sup> Section 365.171(12), F.S.

Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

### **E911 System**

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations.<sup>4</sup> In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.<sup>5</sup>

Florida currently has 235 public safety answering points, also known as call centers, which receive emergency 911 calls. Staff in these call centers include call-takers, dispatchers, and dual call-taker/dispatchers. Call-takers answer calls and record necessary information such as the caller's name and the nature of the emergency, and relay this information to dispatchers who assess the information, determine the type of emergency response needed, and direct appropriate emergency services to respond to the call. In some call centers, call-taking and dispatch functions are performed by the same individual (dual call-taker/dispatcher).<sup>6</sup>

State, county, and local government entities administer Florida's E911 system.

The Department of Management Services coordinates the statewide system but has no authority to monitor emergency services. The department provides technical assistance to counties on

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<sup>2</sup> Article I, s. 24(c) of the State Constitution.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 365.171, F.S., also known as the Florida Emergency Communications Number E911 State Plan Act, required the Technology program within the Department of management Services to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan.

<sup>5</sup> Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 1 and 2.

<sup>6</sup> *Id.* at 2.

technology standards and operational capabilities, helps design and implement new communications and data systems, and assists with staff training. The department also develops and updates a statewide emergency communications E911 system plan, which provides guidance to counties but permits them to design and maintain their own 911 systems and plans.<sup>7</sup> The department's statewide 911 coordinator reviews county plans and inspects call centers for compliance with the state plan.

### **E911 Board**

The E911 Board was established by the Legislature in 2007 to administer the Emergency Communications Number E911 System Fund (E911 Trust Fund),<sup>8</sup> which is the main funding source for 911 communications in the state.<sup>9</sup> The board consists of nine members, including the Department of Management Services' E911 system director, who is designated by the Secretary of the Department of Management Services and serves as chair.<sup>10</sup> With oversight by the department, the board administers the fund and disburses revenues to the department, wireless providers, and counties for specific authorized expenses.

### **Boards of County Commissioners**

Boards of County Commissioners are the responsible fiscal agent and ultimate authority for 911 services in each county. Each board designates a county 911 coordinator who serves as a point of contact for local call centers, reports on system status, and submits the county 911 plan to the department. These plans describe county 911 system infrastructure and staffing for each call center. Call centers are operated typically by city police departments and county sheriffs' offices. Call centers may establish their own training protocols and quality assurance measures.<sup>11</sup>

### **Public-Records Exemption for the E911 System**

Current law provides that [a]ny record, recording, or information, or portions thereof, obtained by a public agency<sup>12</sup> or a public safety agency<sup>13</sup> for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an

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<sup>7</sup> Section 365.171(4), F.S.

<sup>8</sup> Section 365.172(5)(a), F.S.

<sup>9</sup> The E911 Trust Fund is derived from a monthly fee (not to exceed 50 cents) on each wireless and non-wireless voice communication subscriber with a Florida billing address. The E911 Board makes disbursements from the E911 Trust Fund for wireless service provider E911 deployment and services, county E911 funding for equipment and services, rural county grants, E911 state grants, and E911 Board administration and operations.

<sup>10</sup> Pursuant to s. 365.172(5)(b), F.S., the Governor appoints the remaining eight members: four county coordinators from a large, medium, and rural county and an at-large representative recommended by the Florida Association of Counties, two local exchange carrier members, and two members from the wireless telecommunications industry.

<sup>11</sup> Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 2.

<sup>12</sup> Section 365.171(3)(c), F.S., defines "public agency" to mean the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

<sup>13</sup> Section 365.171(3)(d), F.S., defines "public safety agency" to mean a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

emergency communications E911 system is confidential and exempt<sup>14</sup> from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. . .<sup>15</sup>

In short, the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency is confidential and exempt from public records requirements. Such information may be released only to a public safety agency.<sup>16</sup>

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. E911 recordings provide the listener with an eyewitness account of the emergency at hand. The emergency often times is a very personal and traumatizing event. As such, states have begun prohibiting the release of E911 recordings.

### **Protections in Other States**

In Maine, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is deemed private data on individuals with respect to the individual making the call. However, a written transcript of the audio recording is considered public except for certain circumstances. A transcript is prepared upon request and the person requesting the transcript is required to pay the actual cost of transcribing the call, in addition to any other applicable costs.<sup>17</sup>

Mississippi provides that all emergency telephone calls and telephone call transmissions and all recordings of such calls are confidential. The recordings may be used only for the purposes as may be needed for law enforcement, fire, medical rescue, or other emergency services.<sup>18</sup>

In Pennsylvania, “[r]ecords or parts of records . . . pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings” are not a public record. However, an agency or a court may release 911 recordings if it determines the public interest in disclosure outweighs the interest in nondisclosure.<sup>19</sup> South Dakota has similar protections and release standards as those in Pennsylvania.<sup>20</sup>

Rhode Island provides that all 911 telephone calls and telephone call transmissions and all tapes containing records of 911 telephone calls are confidential.<sup>21</sup>

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<sup>14</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>15</sup> Section 365.171(12), F.S.

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

<sup>17</sup> Minn. Stat. s. 13.82.

<sup>18</sup> Miss. Code s. 19-5-319.

<sup>19</sup> 65 P.S. s. 67.708.

<sup>20</sup> S.D. Cod. Laws s. 1-27-1.5.

<sup>21</sup> R.I. Gen. Laws s. 39-21.1-17.

**III. Effect of Proposed Changes:**

The bill amends the public-records exemption in s. 365.171(12), F.S., to provide that if an oral recording of a 911 emergency transmission is requested, the recording shall be digitally modified in order to protect the personal identity of any person requesting emergency services or reporting an emergency.

The bill specifies an effective date of July 1, 2011.

**Other potential implications:**

The new requirement that a call recording be digitally modified prior to release may constitute an expansion of the existing public-records exemption. As such, the Legislature may wish to consider amending the bill to include a public necessity statement and to provide for future review and repeal pursuant to the Open Government Sunset Review Act.

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

None.

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

The new requirement that a call recording be digitally modified prior to release may constitute an expansion of the existing public-records exemption that would require a public necessity statement and a two-thirds vote of each house of the Legislature for passage.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Governmental custodians of E911 calls recordings would incur an insignificant cost if required to digitally modify requested recordings.

**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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**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 Governmental Oversight and Accountability Committee

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BILL: SB 874

INTRODUCER: Senator Hays

SUBJECT: Public Records/Emergency Notification Information

DATE: April 1, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	<b>Favorable</b>
2.	Naf	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates an exemption from public-records requirements for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person’s name, address, telephone number, e-mail address, or other electronic communication address. The bill provides for retroactive application of the exemption, and for legislative review and repeal under the provisions of the Open Government Sunset Review Act.

The bill provides a statement of public necessity as required by the State Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 119.071 of the Florida Statutes.

**II. Present Situation:**

**Florida’s Public Records Law**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provides that:

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.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>1</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>2</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public records” to include 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. 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 “intended to perpetuate, communicate, or formalize knowledge.”<sup>3</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>5</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>6</sup> A bill enacting an exemption<sup>7</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>8</sup>

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<sup>1</sup> Section 119.011(12), F.S.

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

<sup>3</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>4</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>5</sup> Article I, s. 24(c) of the State Constitution.

<sup>6</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>7</sup> Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>8</sup> Section 24(c), Art. I of the State Constitution.

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>9</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

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

The Open Government Sunset Review Act<sup>11</sup> sets forth a legislative review process for newly-created or substantially-amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public-records or public-meetings exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Act also requires consideration of six questions regarding the scope of the exemption and related protections.<sup>12</sup>

### **Emergency Notifications**

State agencies are required by law to have emergency plans in place in case of a natural disaster.<sup>13</sup> These emergency plans are not required to have any sort of associated notification system. The Department of Health has taken steps to keep the public health community informed of public health emergencies using the Florida Department of Health Emergency Notification System or FDENS.<sup>14</sup>

Sheriff's offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. "This system

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<sup>9</sup> Op. Att'y Gen. Fla. 85-62 (1985).

<sup>10</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So. 2d 289 (Fla. 1991).

<sup>11</sup> Section 119.15, F.S.

<sup>12</sup> Section 119.15(6)(a), F.S.

<sup>13</sup> *See, e.g.*, s. 252.35, F.S.

<sup>14</sup> Florida Health Alert Network, <http://www.doh.state.fl.us/fdens/index.html> (last visited March 01, 2011).

allows [the Sumter County Sheriff's Office] to telephone all or targeted areas of the County in case of an emergency situation that requires immediate action (such as a boil-water notice, missing child or evacuation notices).<sup>15</sup> Brevard County has in place a similar emergency alert notification system for natural emergencies.<sup>16</sup> Florida State University has a more comprehensive alert system that includes text messages, voice-mail messages, email messages, facebook messages, indoor and outdoor sirens, a hotline and more.<sup>17</sup>

A limited public records exemption already exists for persons requesting emergency assistance through E911. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.<sup>18</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071, F.S. to provide that any information furnished for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to information held by an agency, before, on, or after the effective date of this exemption.<sup>19</sup>

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** creates an undesignated section of law providing a statement of Legislative intent supporting the constitutionally required public necessity statement. The bill states that using current technology, agencies may contact members of the public by a variety of electronic means, including cellular telephones and electronic mail, to alert them of imminent natural and manmade disasters, medical emergencies, criminal emergencies, and other dangerous conditions. Public safety is significantly enhanced through the use of such emergency notification programs, and expansion of such programs further increases public safety. The exemption is designed to alleviate concerns about disclosure of information in these circumstances that could be used for criminal purposes. Therefore, the bill states that the public-records exemption necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.

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<sup>15</sup> Sumter County, Florida, Sheriff's Office, <http://www.sumtercountysheriff.org/emergencymanagement/codered.asp> (last visited March 01, 2011).

<sup>16</sup> Brevard County Emergency Management Office, <http://embrevard.com/> (last visited March 01, 2011).

<sup>17</sup> Florida State University ALERT, Emergency Notification System, <http://www.safety.fsu.edu/emergencymanagement/fsualert.html> (last visited March 01, 2011) see generally, Florida Department of Law Enforcement, State Working Group On Domestic Preparedness Ad Hoc Committee on University and College Emergency Notification Systems, <http://www.fdle.state.fl.us/Content/getdoc/c2c4f5df-1fa5-4b26-adad-4d3e23665c43/SWGUniversityCollegeEmergencyNotificationSystems.aspx>.

<sup>18</sup> Section 365.171(12), F.S.

<sup>19</sup> The Supreme Court of Florida ruled that a public-records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

**Section 3** provides that the act will take effect upon becoming a law.

#### IV. Constitutional Issues:

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

None.

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

**Vote Requirement:** Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

**Subject Requirement:** Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

**Public Necessity Statement:** Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

**Breadth:** A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>20</sup> This bill does not specify what agencies<sup>21</sup> it applies to or what emergency notification programs it is intended to include. To survive constitutional scrutiny, the bill must be narrowly tailored to alleviate concerns about disclosure of information in these circumstances that could be used for criminal purposes.

##### C. Trust Funds Restrictions:

None.

#### V. Fiscal Impact Statement:

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

None.

<sup>20</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

<sup>21</sup> By default it will apply to “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.” Section 119.011, F.S.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

**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.

**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 Governmental Oversight and Accountability Committee

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BILL: SB 996

INTRODUCER: Senator Simmons

SUBJECT: Communications Among Branches of Government

DATE: April 1, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Boland</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Roberts</u>	<u>Roberts</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

Generally, opinions of the Florida Supreme Court or the various district courts of appeal are published online for the public, and copies of the opinions are furnished to the parties to the litigation and to the court below. Courts sometimes issue opinions that declare statutes unconstitutional, recommend statutory changes, or find the meaning of statutes unclear. Currently, the Legislature and the Governor are not notified by the clerk of the court of such opinions, unless the Legislature or a member of the executive branch happens to be a party to that particular litigation. The bill requires that, in regard to these categories of opinions, the clerk of the respective court shall furnish a copy of the opinion to the President of the Senate, the Speaker of the House of Representatives, and the Governor within 30 days after the opinion is published by the court.

This bill creates sections 25.079 and 35.079, Florida Statutes.

**II. Present Situation:**

Currently, opinions issued by the Florida Supreme Court and the five district courts of appeal are available on each of the courts' websites.<sup>1</sup> In addition, opinions are published by various private publishing companies. While the courts routinely provide copies of the opinion to the parties to the litigation, opinions are not generally provided to nonparties.

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<sup>1</sup> The opinions of the Florida Supreme Court are found at <http://www.floridasupremecourt.org/decisions/index.shtml>. In addition, the webpage contains links to the opinions of each of the five district courts of appeal.

Appellate court opinions sometimes declare a statute invalid. Often an executive branch agency is a party to the litigation and receives a copy of the opinion. However, a statute can be declared invalid in cases in which no government entity is a party to the litigation. For example, in *Massey v. David*, the Florida Supreme Court declared a statute unconstitutional because the statute impermissibly encroached on the rulemaking authority of the court.<sup>2</sup> The *Massey* case was a legal malpractice case between an attorney and a former client. Therefore, no government entity was involved. Likewise, courts occasionally issue opinions that recommend statutory changes or identify technical or policy problems in statutes.<sup>3</sup> Currently, there is no policy, formal or otherwise, of notifying anyone other than the parties to the litigation and the court below of any court opinion.<sup>4</sup>

Previously, a section of the Florida Statutes mandated that copies of the reports of the decisions of the Supreme Court and of the district courts of appeal be distributed to the Governor, each Cabinet officer, each justice of the Supreme Court, each judge of the district courts of appeal, each circuit judge, each judge of county courts, each state attorney, each public defender, each state university and legal depository, and two copies thereof to the Attorney General. Also, the statute required that such copies be distributed to the clerks of the United States district courts in the Northern, Middle, and Southern Districts of Florida. Further, that same statute required that copies of the reports of decisions of the Supreme Court and the district courts of appeal be transmitted by mail or express to the Governor of each state and territory which sends the reports of its courts to this state.<sup>5</sup> The statute, along with several related sections, was repealed in 2009.<sup>6</sup>

### III. Effect of Proposed Changes:

This bill applies to opinions issued by the Florida Supreme Court or any Florida district court of appeal. If any such court issues an opinion declaring a statute, regulation, or government practice unconstitutional, recommending statutory or regulatory changes, or finding that the meaning of a statute is unclear, then the clerk of that court must submit a copy of the opinion to the President of the Senate, the Speaker of the House of Representatives, and the Governor within 30 days after the opinion is published by the court.

The bill provides an effective date of July 1, 2011.

### IV. Constitutional Issues:

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

None.

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

None.

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<sup>2</sup> *Massey v. David*, 979 So. 2d 931 (Fla. 2008).

<sup>3</sup> *L.A. Fitness Int'l, LLC v. Mayer*, 980 So. 2d 550, 561 (Fla. 4th DCA 2008).

<sup>4</sup> Telephone conversation with the clerk's office of the Florida First District Court of Appeal (March 17, 2011).

<sup>5</sup> Section 25.311, F.S. (2008).

<sup>6</sup> Chapter 2009-204, s. 21, Laws of Fla. (repealing ss. 25.311, 25.321, 25.331, 25.361, and 25.381, F.S.).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that the Florida Supreme Court and the district courts of appeal must provide copies of certain opinions to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Article V, subsection 2(a), of the Florida Constitution, provides that the Florida Supreme Court “shall adopt rules for the practice and procedure” in all courts. The Florida Supreme Court has interpreted this provision to mean that the Court has the exclusive power to create rules of practice and procedure and statutes that encroach on that power, if not merely incidental to substantive legislation, are unconstitutional.<sup>7</sup> If the Court were to determine that the provisions of this bill created a procedural rule, the Court could hold the statute invalid or adopt it as a rule of court.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator has released a judicial impact statement concerning this bill.<sup>8</sup> The statement concluded that the bill can be anticipated to increase appellate court workload relating to the identification and selection of opinions required to be transmitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor, and with the transmission of those opinions by electronic or other means. However, the statement noted that the fiscal impact arising from this increased workload cannot be precisely quantified.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>7</sup> *Massey*, 979 So. 2d at 937.

<sup>8</sup> Office of the State Courts Administrator, *2011 Judicial Impact Statement for SB 996*, February 23, 2011 (on file with the Senate Committee on Judiciary).

**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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**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 Governmental Oversight and Accountability Committee

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BILL: SB 704

INTRODUCER: Sachs and Gaetz

SUBJECT: Special Observances/Purple Heart Day

DATE: March 31, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	MS	<b>Favorable</b>
2.	Mason	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill provides that the Governor may annually designate August 7 of each year as “Purple Heart Day” to commemorate those that have been wounded or killed while serving in any branch of the United States Armed Forces.

This bill creates section 683.146 of the Florida Statutes.

**II. Present Situation:**

**Legal Holidays and Special Observance Days**

Chapter 683, F.S., establishes legal holidays and special observance days. Legal holidays and special observance days may apply throughout the state or they may be limited to particular counties. For example, “Gasparilla Day”<sup>1</sup> is a legal holiday observed only in Hillsborough County while “Bill of Rights Day”<sup>2</sup>, if issued by the Governor, is observed throughout the state. Also, designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees.<sup>3</sup> Another provision of statute, s. 110.117, F.S., establishes which legal holidays are paid holidays for public employees.

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<sup>1</sup> Section 683.08, F.S.

<sup>2</sup> Section 683.25, F.S.

<sup>3</sup> “Legal holidays” are not necessarily the same as “paid holidays” for governmental employees. Section 110.117(1), F.S., provides the following holidays as paid holidays for all state branches and agencies: New Year’s Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veteran’s Day; Thanksgiving Day and Friday after Thanksgiving; and Christmas Day.

The declaration of a specific day as a legal holiday may impact state contracts. Section 683.02, F.S., provides that whenever reference is made to “legal holidays” in contracts to be performed by the state, the term includes the holidays designated in s. 683.01, F.S., and such others as may be designated by law. Designating a day as a legal holiday may also affect legal notice requirements and result in the need to count additional days to calculate legal filing dates or periods. For example, Florida Rules of Civil Procedure 1.090(a) provides:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a *Saturday, Sunday, or legal holiday*, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, *intermediate Saturdays, Sundays, and legal holidays shall be excluded* in the computation [emphasis added].

The legal holidays established in s. 683.01(1), F.S., are:

- (a) Sunday, the first day of each week.<sup>4</sup>
- (b) New Year’s Day, January 1.
- (c) Birthday of Martin Luther King, Jr., January 15.
- (d) Birthday of Robert E. Lee, January 19.
- (e) Lincoln’s Birthday, February 12.
- (f) Susan B. Anthony’s Birthday, February 15.
- (g) Washington’s Birthday, the third Monday in February.
- (h) Good Friday.
- (i) Pascua Florida Day, April 2.<sup>5</sup>
- (j) Confederate Memorial Day, April 26.
- (k) Memorial Day, the last Monday in May.
- (l) Birthday of Jefferson Davis, June 3.
- (m) Flag Day, June 14.
- (n) Independence Day, July 4.
- (o) Labor Day, the first Monday in September.
- (p) Columbus Day and Farmers’ Day, the second Monday in October.
- (q) Veterans’ Day, November 11.
- (r) General Election Day.
- (s) Thanksgiving Day, the fourth Thursday in November.
- (t) Christmas Day, December 25.<sup>6</sup>

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<sup>4</sup> Sunday as a holiday has its origins in the Christian Sabbath or day of rest.

<sup>5</sup> “Pascua Florida” is a Spanish term that means *flowery festival* or *feast of flowers*. It usually refers to the Easter season, though, “Pascua” can, depending on the context, refer to the Jewish Passover, Easter, Christmas, Epiphany or Pentecost. See, <http://www.answers.com/topic/pascua-florida>. April 2 each year is designated as “Florida State Day” and is known as “Pascua Florida Day.” Juan Ponce de León called the land he encountered in 1513 “Pascua florida.” The holiday is to be observed in the same manner as a “patriotic occasion.”

<sup>6</sup> Public designation of Christmas Day as a holiday has been determined to be constitutionally acceptable as “. . . the Christmas holiday in our national culture contains both secular and sectarian elements.” See, *Silver Rose Entertainment, Inc.*,

(u) Shrove Tuesday, sometimes also known as “Mardi Gras,” in counties where carnival associations are organized for the purpose of celebrating the same.<sup>7</sup>

In addition to legal holidays, Chapter 683 recognizes the following special observances: Arbor Day; Pan-American Day; Pascua Florida Day; Gasparilla Day; DeSoto Day; Grandparents’ and Family Caregivers’ Day; Law Enforcement Appreciation Month; Law Enforcement Memorial Day; Parade Day; State Observance of National Day of Mourning; Patriots’ Day; I Am An American Day; Teachers’ Day; Retired Teachers’ Day; Parents’ and Children’s Day; Save the Florida Panther Day; Rosh Hashanah, Yom Kippur, and Good Friday; Florida Jewish History Month; Juneteenth Day; Law Day and Law Week; Florida Missing Children’s Day; Florida Alzheimer’s Disease Day; Bill of Rights Day; Ronald Reagan Day; Homeless Persons’ Memorial Day; Three Kings Day; Child Welfare Professionals Recognition Day; and Ronshay Dugan’s Act.<sup>8</sup>

### **The Purple Heart**

The Purple Heart was established by General George Washington at Newburgh, New York, on August 7, 1782 during the Revolutionary War.<sup>9</sup> It was re-established by the President of the United States per War Department General Orders 3, 1932 and is currently awarded pursuant to Executive Order 11016, April 25, 1962, Executive Order 12464, February 23, 1984 and Public Law 98-525, October 19, 1984.<sup>10</sup>

Subsection (a) or paragraph 2-8, Army Regulation 600-8-22 provides that the Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force or any civilian national of the US who, while serving under competent authority in any capacity with one of the United States Armed Services after April 5, 1917, has been wounded or killed, or who has died or may hereafter die after being wounded:<sup>11</sup>

- (1) In any action against an enemy of the US.
- (2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the US are or have been engaged.

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v. *Clay County*, 646 So.2d 246 at 253 (1st DCA 1994), citing *Lynch v. Donnelly*, 465 U.S. 668, 104 S. Ct. 1355, 79 L.Ed.2d (1984).

<sup>7</sup> The day before the beginning of Lent is known as *Shrove Tuesday*. To shrove someone, in old-fashioned English (he shrives, he shrove, he has shriven *or* he shrives, he shrived, he has shrived), is to hear his acknowledgement of his sins, to assure him of God's forgiveness, and to give him appropriate spiritual advice. Shrove Tuesday is also called *Fat Tuesday* (in French, Mardi=Tuesday; gras=fat), because on that day fats normally used in cooking are used up because they will not be used during Lent. The day (or sometimes a longer period immediately preceding Lent) is also called *Carnival*, which means "farewell to meat." "Carni" as in carnivorous, and "vale" as in valediction, valedictorian, etc. One last hamburger before the Lenten fast begins. See, <http://elvis.rowan.edu/~kilroy/JEK/LITCAL/ShroveTuesday.html>

<sup>8</sup> 683, F.S.

<sup>9</sup> Paragraph 2-8, Army Regulation 600-8-22 (Military Awards)

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

<sup>11</sup> Subsection (b) of Paragraph 2-8, Army Regulation 600-8-22 states that the Purple Heart Award is not awarded based on a recommendation but rather, the individual is entitled to it upon meeting the specific criteria that is provided throughout paragraphs 2-8. Subsection (b) (1)-(6) provide definitions and examples of what qualifies and what does not qualify as a “wound”. Also, subsections (c)-(h) in paragraphs 2-8 provide other stipulations of who may receive the Purple Heart Award.

- (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the US is not a belligerent party.
- (4) As a result of an act of any such enemy of opposing armed forces.
- (5) As the result of an act of any hostile foreign force.
- (6) After March 28, 1973, as a result of an international terrorist attack against the UIS or a foreign nation friendly to the US, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed services concerned if person from more than one service are wounded in the attack.
- (7) After March 28, 1972, as a result of military operations while serving outside the territory of the US as part of the peacekeeping force.

Presently, there are several states that honor and celebrate the Purple Heart Award by designating a specific day of the year as Purple Heart Day. For example, Wisconsin has designated August 7<sup>th</sup> of each year as Purple Heart Day.<sup>12</sup> Minnesota and Nevada have also designated a specific day as Purple Heart Day.

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

This bill creates s. 683.146, F.S., designating August 7 of each year as “Purple Heart Day.” The bill specifies that the Governor may annually issue a proclamation designating August 7 as “Purple Heart Day.” The bill also encourages public officials, schools, private organizations, and all residents of the state to honor those that have been wounded or killed while serving in the United States Armed Services by commemorating “Purple Heart Day.”

### **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.

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<sup>12</sup> Wisconsin State Statutes s. 14.16 (11)

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill does not require that local governments issue a proclamation. Issuance of the proclamation by the Governor may give rise to some costs, though it is likely *de minimus*.

**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.



The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in the Act are also met.

This bill amends section 768.1355, Florida Statutes.

## II. Present Situation:

The “Florida Volunteer Protection Act” (Act) provides that any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under the volunteer services.<sup>1</sup> Such person may not incur civil liability for any act or omission by the person which results in personal injury or property damage under specified circumstances. The volunteer is immune from civil liability for acts or omissions he or she performed without compensation and that were performed within his or her official duties for any nonprofit organization which result in personal injury or property damage if:

- The volunteer was acting in good faith within the scope of any official duties performed under such volunteer service and the volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and,
- The injury or damage was not caused by any wanton or willful misconduct on the part of the volunteer in the performance of such duties.

For purposes of the Act, “nonprofit organization” means any organization that is exempt from federal taxation under federal law<sup>2</sup> or any federal, state, or local governmental entity.<sup>3</sup>

“Compensation,” for purposes of the act, does not include a stipend as provided by the Domestic Service Volunteer Act of 1973 or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.<sup>4</sup>

The intent of the Act is not to immunize volunteers from liability but to shift liability from the volunteer to the nonprofit organization only in circumstances where the volunteer is *exercising ordinary reasonable prudent care and meets the other criteria* specified in s. 768.1355, F.S.<sup>5</sup> The Act is written in the conjunctive, not disjunctive, so that each requirement in the statute must be present for the volunteer to be afforded immunity.<sup>6</sup>

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<sup>1</sup> Section 768.1355, F.S.

<sup>2</sup> 26 U.S.C. s. 501.

<sup>3</sup> Section 768.1355(1)(b)1., F.S.

<sup>4</sup> Section 768.1355(1)(b)2., F.S.

<sup>5</sup> *Campbell v. Kessler as Personal Representative of the Estate of Reuben D. Berger*, 848 So. 2d 369, 371-72 (Fla. 4th DCA 2003).

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

### III. Effect of Proposed Changes:

The bill revises the statutory criteria under the Florida Volunteer Protection Act (Act) applicable to compensation that a volunteer receives and the source of the volunteer's compensation in order to shift liability from the volunteer, and under certain circumstances, any liability imputed to the source that provides compensation to volunteer under the bill, to the nonprofit organization.

Under the bill, any person who volunteers any service for any nonprofit organization, including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services.

The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in Act are also met.

The bill provides an effective date of July 1, 2011, and applies to causes of action accruing on or after that date.

#### Other Potential Implications:

In some situations, a volunteer who receives compensation from another may create an agency relationship between the source of the compensation and the volunteer so that source of the compensation may be held vicariously liable, or liable under some other theory, for imputed negligence for the acts of the volunteer. "Vicarious liability" allows an injured party to seek redress from another who is not the party primarily responsible.<sup>7</sup>

The factors required to establish an agency relationship are: (1) acknowledgement by the principal that the agent will act for the principal; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.<sup>8</sup> If an agency relationship is created between the volunteer and the source that provides the compensation, on a case-by-case basis, it may be unclear, for purposes of the Florida Volunteer Protection Act, whether the volunteer will be acting as agent of the nonprofit organization or the source that provides the compensation.

### IV. Constitutional Issues:

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

None.

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<sup>7</sup> See *American Home Assurance Co. v. National Railroad Passenger Corp.*, 908 So. 2d 459 (Fla. 2005).

<sup>8</sup> See *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990).

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:

A volunteer who receives compensation from another source, and the “source that provides compensation, if the volunteer is not acting as an agent of the source,” may shift liability from the volunteer and any liability imputed to the source of the compensation received by the volunteer to the nonprofit organization, if the volunteer otherwise meets the statutory criteria for immunity under the Florida Volunteer Protection Act.

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.)

**CS by Children, Families, and Elder Affairs on March 22, 2011:**

The committee substitute changes the effective date to clarify that the act only applies to causes of action accruing on or after July 1, 2011.

**CS by Judiciary on March 14, 2011:**

The committee substitute provides that the source of the compensation for the volunteer of a nonprofit organization will not incur any civil liability if the volunteer is not acting as an agent of the source and other specified criteria in the Florida Volunteer Protection Act are satisfied. The criteria are applicable to the volunteer’s conduct when performing official duties for the nonprofit organization.

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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**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 Governmental Oversight and Accountability Committee

**BILL:** CS/SB 1616

**INTRODUCER:** Higher Education Committee and Senator Flores

**SUBJECT:** Dan Marino Foundation Florida Vocational College

**DATE:** April 3, 2011                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	<b>Fav/CS</b>
2.	McKay	Roberts	GO	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill would create the Dan Marino Foundation Florida Vocational College as a public residential postsecondary school located in Broward County. The college is established as a component of the K-20 public education system. The organization of the school would be similar to that of the Florida School for the Deaf and the Blind in that it would be responsible for serving students with certain disabilities, be overseen by a board of trustees, be subject to annual audits by the Auditor General, have its own campus police, and require all employees to undergo a level 2 background screening.

This bill amends ss. 1000.04 and 1001.20, Florida Statutes. The bill creates one unnumbered section of law.

**II. Present Situation:**

**Exceptional Education**

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children

with disabilities who have been suspended or expelled from school. As the state educational agency, the Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.

### **Postsecondary Education for Students with Developmental Disabilities**

The 2010 Legislature directed the legislative Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a review of postsecondary educational opportunities for individuals with developmental disabilities.<sup>1</sup> Section 393.063, F.S., defines developmental disability to mean “a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.” The legislation required the review to address opportunities for postsecondary education and vocational training; transitioning from school to the workforce; and best practices for providing such postsecondary education and training services, including any notable public-private partnerships. According to the report, students with developmental disabilities represent approximately 13 percent of all exceptional student education (ESE) students, or 44,113 of the 341,632 ESE students in 2009-2010.<sup>2</sup> Of the 7,920 students with developmental disabilities who exited school districts in 2007-2008, 905 enrolled in adult education programs and 734 enrolled in postsecondary vocational, college, or university programs. The remaining 6,281 students did not continue on to adult education or postsecondary programs in the year after they left high school.<sup>3</sup>

The OPPAGA review found that while all school districts provide basic transition services to help ESE students with developmental disabilities move into the workforce and live independently after they leave high school, at least 13 school districts have developed programs that provide elements of postsecondary education for students with developmental disabilities through partnerships with public and private universities and school district technical centers.<sup>4</sup> The programs are funded by ESE funds, and students can participate until they receive a standard high school diploma or reach age 22.

Two postsecondary institutions, Indian River State College in Vero Beach and Brewster Technical Center in Tampa, offer Postsecondary Adult Vocational certificates of completion in specific workforce areas for students with developmental disabilities. The University of North Florida in Jacksonville provides an on-campus transition program where students with developmental disabilities audit classes with nondisabled students and live in student housing.<sup>5</sup>

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<sup>1</sup> ch. 2010-155, F.S. Readable at: <http://laws.flrules.org/2010/155>.

<sup>2</sup> *Students with Developmental Disabilities Have Limited Postsecondary Options; A New Institution Would Expand Choices but Require Additional State Funding*, Office of Program Policy Analysis and Government Accountability, Report No. 11-08, February 2011, p.2. Readable at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=11-08>.

<sup>3</sup> *Id.*, p.2.

<sup>4</sup> *Id.*, p.3.

<sup>5</sup> *Id.*, p.5.

The federal Higher Education Opportunity Act reauthorization<sup>6</sup> creates incentives for states to provide transition to postsecondary education programs for students with intellectual disabilities—those with mental retardation or a cognitive impairment characterized by significant limitation in intellectual and cognitive functioning who are or were provided a free and appropriate public education under the Individuals with Disabilities Education Act. Student with intellectual disabilities are a subset of the population of students with developmental disabilities. Three Florida institutions—the University of South Florida, St. Petersburg (USFSP); University of North Florida (UNF); and Lynn University have received a grant, funded for \$421,000 a year for 5 years, to form a consortium<sup>7</sup> to oversee the following grant activities:

- Expansion of the quality and depth of the current transition programs on the campuses of USFSP, UNF, and Lynn University;
- Support for other existing transition programs for students with intellectual disabilities at institutions of higher education across the State of Florida; and,
- Expansion of the transition programs in these institutions across Florida.

### **Funding for Exceptional Student Education**

Exceptional Student Education (ESE) programs and services are provided by federal, state, and local funds. Under the Individuals with Disabilities Education Improvement Act (IDEA), federal special education funds are distributed through state grant programs and discretionary grant programs. Part B of the law, the main program, authorizes grants to state and local education agencies to offset part of the costs of the education needs of children with disabilities, ages 3 through 21.

### **Proposal for a New Postsecondary Institution for Students with Developmental Disabilities**

The 2010 Legislature required OPPAGA to include in its review the feasibility and cost of establishing a residential vocational institution to provide postsecondary education and vocational training for individuals with developmental disabilities.<sup>8</sup> The review found that an advantage of creating such an institution would be that it could provide postsecondary education for students with developmental disabilities beyond the age of 22, which is the current limit for programs receiving ESE funding. Students could attend even if they had not received a standard high school diploma, which is required by state colleges and universities. A potential disadvantage is that the students would be in a separate community of their disabled peers and they would not have the interaction with non-disabled students that they would have on a traditional college campus. The OPPAGA review points out that certain federal student aid programs available for students with intellectual disabilities require that the students be in a program where they participate on at least a half-time basis with individuals without disabilities.<sup>9</sup>

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<sup>6</sup> P.L.110-315

<sup>7</sup> The Florida Consortium on Postsecondary Education Transition Programs and Intellectual Disabilities

<sup>8</sup> *Students with Developmental Disabilities Have Limited Postsecondary Options; A New Institution Would Expand Choices but Require Additional State Funding*, Office of Program Policy Analysis and Government Accountability, Report No. 11-08, February 2011, p.2. Readable at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=11-08>.

<sup>9</sup> *Id.*

### **The Dan Marino Foundation**

Dan Marino is an acclaimed football quarterback who played for the Miami Dolphins from 1983 to 1999. He was inducted into the Pro Football Hall of Fame in 2005.<sup>10</sup> Dan Marino and his wife, Claire, established the Dan Marino Foundation<sup>11</sup> in Broward County in 1992 to assist children with special needs. The Foundation's stated mission is to "open doors" towards independence for children with special needs, teenagers transitioning from foster care and young adults with disabilities."<sup>12</sup> The foundation supports treatment programs, provides outreach services, advances scientific research, and fosters independence through employment and daily living transition programs.<sup>13</sup>

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

This bill would create the Dan Marino Foundation Florida Vocational College as a public residential postsecondary school located in Broward County. The college is established as a component of the K-20 public education system.

#### **Population to be Served**

The school would serve students, ages 18 – 26, who have developmental disabilities and who have either graduated from high school or who did not graduate from high school and are no longer eligible for exceptional student education funding because they are older than 21 years of age. Students would have to meet the enrollment criteria established by the college's board of trustees. The school would provide educational programs and support services including services on an out-reach basis. The college would be required to adopt a 5-year master plan to specify the mission and objectives of the college and procedures for measuring the college's progress toward meeting its objectives. The bill does not state what type of degree, certificate, or other credential the institution would award, and the terms school and college are both used to refer to the Dan Marino Foundation Florida Vocational College. While the population is defined, the type of institution and the level of education it would provide are not clear in the bill.

#### **Board of Trustees**

The college's 7-member board of trustees would be appointed by the Governor and confirmed by the Senate. Board members must have resided in Florida for at least 10 years prior to the appointment. It is not clear why the bill requires 10 years of Florida residency to serve on the board, as that may reduce the number of qualified applicants. One of the board members would be the chair of the college, one would be the chief executive officer of the college, and two of the board members would be persons with developmental disabilities. They would serve 4-year terms and would be reimbursed for travel expenses under s. 112.061, F.S.

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<sup>10</sup> [http://www.profootballhof.com/hof/member.aspx?PLAYER\\_ID=238](http://www.profootballhof.com/hof/member.aspx?PLAYER_ID=238)

<sup>11</sup> <http://www.danmarinofoundation.org/>

<sup>12</sup> *Id.*

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

## **College Funds**

Funds would be deposited in the State Treasury, except for those funds received as a gift, donation or bequest; collected by students; or held in accounts for individual students. The board could invest moneys and securities in The Common Fund, an Investment Management Fund<sup>14</sup> for nonprofit educational institutions. The board would submit a Legislative budget request to the DOE for operations and fixed capital outlay. The Auditor General would be required to conduct annual audits of the accounts and records of the college.

## **College Property**

The board must ensure that the college coordinates with local governing bodies for facilities construction. Property received as a gift or bequest would vest with the board of trustees, and the board could sell such property. The title to the property and assets of the college would vest in the State Board of Education. The college's request for fixed capital outlay funds would be reviewed by the DOE for consistency with the college's campus master plan, educational plant survey, and facilities master plan, and projections of facility space needs could exceed the norm criteria established in state requirements. This provision would allow the college to address the potential physical accommodations of its student population.

## **Personnel**

The board would be responsible for the hiring and firing of employees including the college president. The school's employees would be state employees whose classification and pay would be set by the board, subject to approval by the State Board of Education. Employees of the college would have to undergo a level 2 background screening under the provisions of ch. 435, F.S. The college could grant exemptions from disqualification as provided in s. 435.07, F.S. The bill provides criminal penalties for failure to disclose a material fact or from using the information obtained from the background screening for other purposes.

## **Campus Police**

The board could hire campus police officers who would have to meet the minimum standards of the Department of Law Enforcement's Criminal Justice Standards and Training Commission. Campus police would have arrest powers for a violation of law that occurred on school property, and the arrest could be made on campus or off campus. The college must report crime statistics annually to the board of trustees and the Commissioner of Education.

## **Rules**

The board is authorized to adopt rules and to send them to the State Board of Education for approval or disapproval. This type of rule arrangement can cause delays in rule adoption.

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<sup>14</sup> <http://www.commonfund.org/pages/default.aspx>

### **Relationship of the College to the Dan Marino Foundation**

The name of the Dan Marino Foundation is included in the name of the college, and while the educational programs at the college would appear to build on the work of the foundation, the relationship of the non-profit corporation—the foundation—to the public college is not clear.

#### **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:

To the extent that adults with developmental disabilities became employed, they would enjoy the benefits of an income and would contribute to the economy.

C. Government Sector Impact:

The OPPAGA study estimated that if the state paid the full cost of construction for a residential college serving 600 students, such as the one proposed in this bill, the cost would be \$36 million. Recurring operational funds for the school were estimated to be between \$1.2 million and \$40 million.<sup>15</sup> The costs would be less if students paid tuition, though tuition is not authorized in the bill. Serving a smaller student population or leasing space from an existing facility could also reduce the cost.

#### **VI. Technical Deficiencies:**

None.

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<sup>15</sup> *Students with Developmental Disabilities Have Limited Postsecondary Options; A New Institution Would Expand Choices but Require Additional State Funding*, Office of Program Policy Analysis and Government Accountability, Report No. 11-08, February 2011, pp. 7-8. Readable at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=11-08>.

**VII. Related Issues:**

Section 1 of the bill is substantially similar to s. 1002.36, F.S., which creates the Florida School for the Deaf and the Blind.

**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 Higher Education on March 22, 2011:**

The committee substitute expands student eligibility requirements to include students who did not graduate from high school and have passed the eligibility age for ESE funding. The membership of the college's board of trustees will include the chair and executive director of the college.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete lines 17 - 95

and insert:

Section 1. Section 287.0575, Florida Statutes, is amended  
to read:

287.0575 Coordination of contracted services.—

(1) There is created the Health and Human Services Contract  
Resource Council, which is a coordinating council as defined in  
s. 20.03.

(a) The council shall ensure that the public policy of this  
state relating to the administrative and fiscal contract



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13 management of health and human services is developed to promote  
14 interdepartmental collaboration and program administration in  
15 order that contracts and services are planned, managed, and  
16 delivered in an integrated manner.

17 (b) The council is created in the Department of Management  
18 Services, which shall provide administrative support and service  
19 to the council.

20 (c) The council shall meet for its organizational session  
21 no later than August 1, 2011. The council shall select a chair  
22 from its members. Thereafter, the council shall meet at least  
23 six times each year in order to:

24 1. Develop and implement a shared and cohesive vision on  
25 how to deliver integrated services to eliminate administrative  
26 duplication and improve outcomes in this state.

27 2. Align, coordinate, and consolidate administrative and  
28 fiscal performance standards into model consolidated standards  
29 for vendors that provide health and human services. The model  
30 consolidated standards shall be used by the agencies in  
31 subsection (2) in monitoring contracts and as part of each  
32 agency's evaluation of competitive bids for health and human  
33 services.

34 3. Review, align, coordinate, consolidate, and recommend  
35 uniform administrative rules and policies so that administrative  
36 requirements and goals for the contracts are aligned to the  
37 greatest extent possible and not in conflict.

38 4. Review the monitoring protocols related to the  
39 administrative and fiscal requirements of vendors that provide  
40 health and human services to ensure that the protocols are in  
41 compliance with this section.



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42           5. Design and implement actions that promote collaboration,  
43 creativity, increased efficiency, information sharing, and  
44 improved service delivery between and within state agencies and  
45 organizations that provide services. In particular, the efforts  
46 shall include the long-range planning process mandated by s.  
47 216.013.

48           6. Make recommendations for the establishment of a  
49 consolidated data warehouse and archive to maintain the  
50 corporate, fiscal, and administrative records of vendors that  
51 provide health and human services. The council shall include  
52 recommendations to ensure that the administrative and fiscal  
53 data are up-to-date and accessible to other agencies,  
54 participating vendors, and the general public through web-based  
55 technology, and managed in a manner that allows contract  
56 information to be aggregated and assessed to determine the  
57 amount, value, and achievement of administrative standards by  
58 vendor, by agency, and by type of service.

59           7. Identify to the greatest extent possible, existing and  
60 potential private and nonstate moneys and resources for  
61 improving contracting efficiencies, including, but not limited  
62 to, federal grant funds, other nonstate grant funds, gifts,  
63 donations, foundation and organization grants, and any other  
64 form of private funding opportunities, including public-private  
65 partnerships.

66           8. Engage in other activities that will improve  
67 collaboration of agencies in order to create, manage, and  
68 promote coordinated policies, programs, and service delivery  
69 systems.

70           9. Designate the lead state agency for all administrative



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71 and fiscal matters related to contracts for health and human  
72 services.

73 (2) The council shall select a chair from among its  
74 members. The council shall consist of seven members:

75 (a) The Secretary of Children and Family Services or his or  
76 her designee;

77 (b) The Secretary of Juvenile Justice or his or her  
78 designee;

79 (c) The director of the Agency for Persons with  
80 Disabilities or his or her designee;

81 (d) The State Surgeon General or his or her designee;

82 (e) The Secretary of Health Care Administration or his or  
83 her designee;

84 (f) The Secretary of Elderly Affairs or his or her  
85 designee; and

86 (g) The executive director of the Department of Veterans'  
87 Affairs or his or her designee.

88 (3) The following duties and responsibilities of the  
89 Department of Children and Family Services, the Agency for  
90 Persons with Disabilities, the Department of Health, the  
91 Department of Juvenile Justice, the Agency for Health Care  
92 Administration, the Department of Elderly Affairs, and the  
93 Department of Veterans' Affairs, and service providers under  
94 contract to those agencies, are established:

95 (a) ~~(1)~~ No later than August 1, 2011 ~~2010~~, or upon entering  
96 into any new contract for health and human services, state  
97 agencies contracting for health and human services must notify  
98 their contract service providers of the requirements of this  
99 section.



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100           **(b)**~~(2)~~ No later than October 1, 2011 ~~2010~~, contract service  
101 providers that have more than one contract with one or more  
102 state agencies to provide health and human services must provide  
103 to each of their contract managers a comprehensive list of their  
104 health and human services contracts. The list must include the  
105 following information:

106           **1.**~~(a)~~ The name of each contracting state agency and the  
107 applicable office or program issuing the contract.

108           **2.**~~(b)~~ The identifying name and number of each contract.

109           **3.**~~(c)~~ The starting and ending date of each contract.

110           **4.**~~(d)~~ The amount of each contract.

111           **5.**~~(e)~~ A brief description of the purpose of the contract  
112 and the types of services provided under each contract.

113           **6.**~~(f)~~ The name and contact information of the contract  
114 manager.

115           **(c)**~~(3)~~ With respect to contracts entered into on or after  
116 August 1, 2011 ~~2010~~, effective November 1, 2011 ~~2010~~, or 30 days  
117 after receiving the list provided under paragraph (b) ~~subsection~~  
118 ~~(2)~~, a single lead administrative coordinator for each contract  
119 service provider shall be designated by the Health and Human  
120 Services Contract Resource Council as provided in this  
121 subsection from among the agencies having multiple contracts as  
122 provided in paragraph (b) ~~subsection (2)~~. On or before the date  
123 such responsibilities are assumed, the designated lead  
124 administrative coordinator shall provide notice of his or her  
125 designation to the contract service provider and to the agency  
126 contract managers for each affected contract. Unless another  
127 lead administrative coordinator is selected by the Health and  
128 Human Services Contract Resource Council ~~agreement of all~~



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129 ~~affected contract managers~~, the designated lead administrative  
130 coordinator shall be the agency contract manager of the contract  
131 with the highest dollar value over the term of the contract,  
132 provided the term of the contract remaining at the time of  
133 designation exceeds 24 months. If the remaining terms of all  
134 contracts are 24 months or less, the designated lead  
135 administrative coordinator shall be the contract manager of the  
136 contract with the latest end date. A designated lead  
137 administrative coordinator, or his or her successor as contract  
138 manager, shall continue as lead administrative coordinator until  
139 another lead administrative coordinator is selected by the  
140 Health and Human Services Contract Resource Council ~~agreement of~~  
141 ~~all affected contract managers~~ or until the end date of the  
142 contract for which the designated lead administrative  
143 coordinator serves as contract manager, at which time a new lead  
144 administrative coordinator shall be designated pursuant to this  
145 subsection, if applicable.

146 (d) ~~(4)~~ The designated lead administrative coordinator shall  
147 be responsible for:

148 1. ~~(a)~~ Establishing a coordinated schedule for  
149 administrative and fiscal monitoring;

150 2. ~~(b)~~ Coordinating and consulting with other case managers  
151 to establish a single unified set of required administrative and  
152 fiscal documentation;

153 3. ~~(c)~~ Coordinating and consulting with other case managers  
154 to establish a single unified schedule for periodic updates of  
155 administrative and fiscal information; and

156 4. ~~(d)~~ Maintaining an accessible electronic file of up-to-  
157 date administrative and fiscal documents, including, but not



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158 limited to, corporate documents, membership records, audits, and  
159 monitoring reports.

160 (e)~~(5)~~ Contract managers for agency contracts other than  
161 the designated lead administrative coordinator must conduct  
162 administrative and fiscal monitoring activities in accordance  
163 with the coordinated schedule and must obtain any necessary  
164 administrative and fiscal documents from the designated lead  
165 administrative coordinator's electronic file.

166 (f)~~(6)~~ This section does not apply to routine program  
167 performance monitoring or prohibit a contracting agency from  
168 directly and immediately contacting the service provider when  
169 the health or safety of clients is at risk.

170 (g)~~(7)~~ Each agency contracting for health and human  
171 services shall annually evaluate the performance of its  
172 designated lead administrative coordinator in establishing  
173 coordinated systems, improving efficiency, and reducing  
174 redundant monitoring activities for state agencies and their  
175 service providers. The annual report shall be submitted to the  
176 Health and Human Services Contract Resource Council. The Health  
177 and Human Services Contract Resource Council shall provide an  
178 executive summary of the reports to the Governor, the President  
179 of the Senate, and the Speaker of the House of Representatives.  
180 In addition to an executive summary, the council shall make  
181 recommendations to the President of the Senate and the Speaker  
182 of the House of Representatives for legislation or rulemaking  
183 authority that would promote interdepartmental collaboration and  
184 program integration.

185  
186 ===== T I T L E A M E N D M E N T =====



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187 And the title is amended as follows:

188 Delete lines 3 - 9

189 and insert:

190 contracts; amending s. 287.0575, F.S.; creating the  
191 Health and Human Services Contract Resource Council  
192 within the Department of Management Services;  
193 requiring the department to provide administrative  
194 support; providing meeting times and duties of the  
195 council; providing membership of the council;  
196 establishing the duties of several state agencies,  
197 including the Department of Juvenile Justice and the  
198 Agency for Health Care Administration with regard to  
199 contracts for health and human services; revising the  
200 deadline dates for state agencies to notify their  
201 contract service providers and for contract service  
202 providers to provide their contract managers a list of  
203 their health and human service contracts; requiring  
204 the Health and Human Service Contract Resource Council  
205 to designate a lead administrative coordinator for  
206 each contract service provider; conforming provisions  
207 to changes made by the act; revising the  
208 responsibilities of the designated lead administrative  
209 coordinator; requiring each agency contracting for  
210 health and human services to submit an annual report  
211 to the council; requiring the council to provide an  
212 executive summary of the reports to the Governor and  
213 the Legislature; requiring the council to make  
214 recommendations to the Legislature regarding  
215 legislation or rulemaking authority that would promote



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216 interdepartmental collaboration and program  
217 integration;

**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 Governmental Oversight and Accountability Committee

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BILL: SB 374

INTRODUCER: Senator Bogdanoff

SUBJECT: Health and Human Services Contracts

DATE: April 1, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			CF	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill creates a Health and Human Services Contract Resource Center to serve as a single, consolidated unit for the administrative and fiscal contract management of health and human services outsourced by the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration. The bill gives the center the authority to establish a data warehouse and sell center services.

The bill also creates an exemption from competitive procurement requirements for services provided by an eligible lead community-based provider currently under contract with the Department of Children and Family Services and in compliance with the department's performance, fiscal, and administrative standards.

This bill substantially amends section 287.057, Florida Statutes and creates a new section.

## II. Present Situation:

### Contracting and Outsourcing

Privatization involves the provision of publicly funded services by nongovernment entities. Privatization can take several forms, including the cessation of services by government, the outsourcing of services by government, the divestiture of government assets, and the use of public-private partnerships. Outsourcing has become a common approach to providing human services as states and localities face budget crises and struggle to ensure the same level of services with limited resources. Government is increasingly turning to nonprofit groups, community-based organizations, faith-based organizations, charitable agencies, and private-sector companies to provide human services.<sup>1</sup>

Although the terms “privatization” and “outsourcing” are often used interchangeably, the two service structures are different. With privatization, program infrastructure is transferred entirely from the government to another service provider. The government ceases to provide those services. With outsourcing, the government competitively contracts with a vendor to provide specific services. Most outsourced functions involve transferring responsibilities for the management, operation, upgrade, and maintenance of some infrastructure to the contracted vendor, with the government agency retaining a central role in program oversight.<sup>2,3</sup> The Florida Statutes define “outsource” as the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.<sup>4</sup>

Many factors drive government to outsource the delivery of human services, including the desire to improve service, increase efficiency, and ensure cost-effectiveness. State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

#### *Department of Juvenile Justice (DJJ)*

The Department of Juvenile Justice contracts for residential, probation, prevention, and detention ancillary services pursuant to ch. 287, F.S., relating to procurement of personal property and services. All services are competitively procured, with the exception of medical and mental health care.<sup>5</sup>

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<sup>1</sup> Bandoh, E. *Outsourcing the Delivery of Human Services*, Welfare Information Network, Issue Notes. Vol. 7, No. 12 October 2003. Available at: <http://76.12.61.196/publications/outsourcinghumanservicesIN.htm> (Last visited March 14, 2010.)

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

<sup>3</sup> In Florida law, the term “outsource” means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources. See s. 287.05721, F.S.

<sup>4</sup> Section 287.012(19), F.S.

<sup>5</sup> Department of Juvenile Justice. 2010 Legislative Session Bill Analysis, SB 1584, February 9, 2010.

Section 985.632, F.S., requires DJJ to conduct quality assurance reviews of all programs and services. Program monitors have been integrated with quality assurance reviewers to annually conduct programmatic monitoring as a team. Accreditation is not used to satisfy verification of contractual compliance or to determine whether programs are meeting appropriate health, safety, and treatment requirements. Program monitors provide oversight of contracted programs. A contract manager conducts administrative monitoring once per year for each provider. The department's administrative/fiscal monitoring focuses on the accounting for all contract funds/expenditures to determine that funds have been expended in accordance with the contract and all applicable laws, rules, and regulations. Programmatic monitoring focuses on the delivery of services to youth.<sup>6</sup>

#### ***Agency for Health Care Administration (AHCA)***

The Agency for Health Care Administration does not typically outsource human services related to mental health, substance abuse, child welfare, or juvenile justice. The agency purchases and reimburses providers and managed care plans for these services.<sup>7</sup>

#### ***Department of Children and Family Services (DCF)***

Section 20.19, and Chapters 287 and 402, F.S., require DCF, whenever possible in accordance with established program objectives and performance criteria, to contract for the provision of services by counties, municipalities, not-for-profit corporations, for-profit corporations, and other entities capable of providing needed services, if services so provided are more cost-efficient than those provided by the department.<sup>8</sup> In addition, the department conducts competitive procurements for child welfare services that have been outsourced pursuant to s. 409.1671, F.S.

### **Coordination of Contracted Services**

Section 287.0575, F.S., specifies duties relating to health and human services contracts and the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, and the Department of Veterans' Affairs. The law requires certain contract service providers to supply specified information, and requires administrative coordinators to perform specified duties relating to contract management.

### **Payment Issues**

Current law provides payment procedures for invoices submitted to a state agency. Invoices must be filed with the Chief Financial Officer (CFO), recorded in the financial systems of the state, approved for payment by the agency, and filed with the CFO not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services. In the case of a

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

<sup>7</sup> Agency for Health Care Administration. 2010 Bill Analysis and Economic Impact Statement, SB 1584.

<sup>8</sup> Department of Children and Family Services, Procurement and Contract Management, Contract Management System For Contractual Services. CFOP 75-2. Available at: <http://www.dcf.state.fl.us/admin/publications/policies/075-2.pdf>. (Last visited March 13, 2010).

dispute, the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed.<sup>9</sup>

### III. Effect of Proposed Changes:

#### **Health and Human Services Contract Resource Center**

The bill creates the Health and Human Services Contract Resource Center and houses it for administrative purposes only in the Department of Management Services. The bill specifies that the Legislature intends that the center serve as a single, consolidated unit for the administrative and fiscal contract management of health and human services outsourced by the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration.

The center must:

- Serve as the lead state agency for all administrative and fiscal matters related to health and human services contracts;
- Provide administrative and fiscal monitoring activities in coordination with the agency responsible for the program components related to the contract;
- Establish administrative and fiscal performance standards for vendors providing health and human services, which must be used in contract monitoring and as part of each agency's evaluation of competitive bids for health and human services;
- Develop uniform policies, contract administrative requirements, and monitoring protocols related to the administrative and fiscal requirements of vendors providing health and human services;
- Establish or arrange for the establishment of a consolidated data warehouse and archive to maintain the corporate, fiscal, and administrative records of health and human services vendors. The center must ensure that this data is up to date and accessible to other agencies, participating vendors, and the general public through web-based technology. The records may include articles of incorporation, bylaws, governing board and committee meeting minutes, financial audits, and organizational charts;
- Manage the administrative and fiscal data in a manner that allows contract information to be aggregated and assessed to determine the amount, value, and achievement of administrative standards by vendor, by agency, and by type of service;
- Establish a consolidated schedule for site visits to monitor and evaluate the administrative and fiscal compliance of vendors providing health and human services. The center shall facilitate joint site visits with agency programmatic staff whenever possible; and,
- Create an enterprise that allows nonstate agencies to purchase center services. Eligible buyers include, but are not limited to, local governments, nongovernmental organizations, and vendors that have contracts for health and human services with other local service agencies or organizations.

The center will be governed by a board of trustees consisting of the agency heads, or designees, of the Department of Children and Family Services, the Department of Health, the Department of

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<sup>9</sup> s. 215.422, F.S.

Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration. The chair of the board must be appointed by the Governor from the participating agency heads. The board will approve an annual work program and business plan, review and approve center policies, and establish a mechanism for receiving and evaluating feedback from health and human services vendors. The Governor must appoint an executive director, who must have a graduate degree from an accredited institution and at least 7 years of executive-level experience.

The activities of the center must be phased in beginning with children's services contracts of the Department of Children and Family Services and the Department of Health. Other agency contracts must be incorporated into the center's management protocols in accordance with a schedule developed by the board of trustees and approved by the Legislative Budget Commission. The phasing in of all agency contracts must be completed by June 30, 2011.

### **Procurement Exemption**

The bill amends the procurement exemption provisions of s. 287.057(3)(f), F.S., to specify that services provided by an eligible lead community-based provider as described in s. 409.1671(1)(e) currently under contract with the Department of Children and Family Services and in compliance with the department's performance, fiscal, and administrative standards are not subject to the competitive solicitation requirements of s. 287.057, F.S.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

### **D. Other Constitutional Issues:**

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.<sup>10</sup> Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or

<sup>10</sup> *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991).

exercising unbridled discretion.”<sup>11</sup> The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.<sup>12</sup>

The bill requires the center to establish administrative and fiscal performance standards, and develop uniform policies, requirements, and protocols. Without specifying some adequate standards legislatively, the bill may have a delegation issue.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Indeterminate.

### C. Government Sector Impact:

The bill provides for the appointment of an executive director, but does not provide for an appropriation for the position.

## VI. Technical Deficiencies:

The bill provides that all agency contracts must be phased in by June 30, 2011, which is before the effective date of the bill.

## VII. Related Issues:

Some of the duties specified in the bill conflict with duties specified in s. 287.0575, F.S., which could lead to confusion in implementation.

Some of the center’s duties, like establishing administrative and fiscal performance standards, and developing uniform policies, would need to be adopted as rules, if such legislative authority was given to an agency.<sup>13</sup> Because the authority in this case is given to a “resource center,” which is not an executive branch organizational structure recognized by ss. 20.03 or 20.052, F.S., it is unclear how the center could prescribe policy to the participating agencies.

The bill includes refers to “outsourced” health and human services contracts in a legislative intent section, but never refers to outsourced contracts again in the substantive provisions of the bill, making it unclear whether the bill applies only to outsourced contracts, or all contracts.

<sup>11</sup> *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).

<sup>12</sup> *Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1<sup>st</sup> DCA 1985).

<sup>13</sup> Section 120.052(16), F.S., defines a rule as “each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.”

The bill requires the resource center to establish or “arrange for the establishment” of a “consolidated data warehouse.” The state has been moving for two years towards centralizing all state data centers, pursuant to legislative direction and the guidance of the Agency for Enterprise Information Technology, and agencies may not create new computing facilities or data centers unless authorized by the Legislature.<sup>14</sup> A bill moving through the Senate as of April 1, 2011, SB 7092, further specifies the consolidation of state data centers.

It is unclear why a state agency would need access to a vendor’s articles of incorporation or bylaws, but if it did, that information is currently available from the Department of State.

The bill requires that the center create an “enterprise” to purchase center services, without any legislative guidance. It is unclear whether an entity not specified in Ch. 20, F.S., has the authority to create yet another entity, for the purpose selling services.

### **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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<sup>14</sup> See s. 282.201(4), F.S.

**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 Governmental Oversight and Accountability Committee

BILL: SB 106

INTRODUCER: Senator Ring

SUBJECT: Public Records/Publicly Owned Performing Arts Centers/Historic Capitol Direct-Support Organization

DATE: April 1, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	Pugh	Cooper	CM	<b>Fav/1 Amendment</b>
3.	Naf	Roberts	GO	<b>Pre-meeting</b>
4.				
5.				
6.				

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

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

**I. Summary:**

This bill creates exemptions from public-records requirements for information identifying a donor or prospective donor to a “publicly owned performing arts center” and to the direct-support organization of the Legislative Research Center and Museum at the Historic Capitol, should the donor wish to remain anonymous.

The bill defines the term “publicly owned performing arts center” to mean a facility owned and operated by a city or county, has at least 200 seats, and promotes development of any or all performing, visual or fine arts.

The bill includes a statement of public necessity as required by the State Constitution.

Both exemptions are subject to legislative review and repeal under the Open Government Sunset Review Act.

Because this bill creates new public-records exemptions, it requires a two-thirds vote of the membership of each house of the Legislature for passage.

This bill substantially amends s. 272.136, F.S., and creates two undesignated sections of law.

## II. Present Situation:

### Public-Records Laws

The State of Florida has a long history of providing public access to governmental records, with the first public records law being enacted by the Florida Legislature in 1892.<sup>1</sup> In 1992, Florida voters adopted an amendment to the State Constitution, which raised the statutory right of access to public records to a constitutional level.<sup>2</sup>

Section 24, Art. I, of the State Constitution, states that:

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.

The Public Records Act, located in ch. 119, F.S., specifies conditions under which the public must be provided access to agency records.<sup>3</sup> Section 119.07(1)(a), F.S., requires every person who has custody of a public record to allow the record to be inspected and examined by any person, “at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records”.<sup>4</sup> Unless specifically exempted by law, all agency records are available for public inspection.

The term “public record”, is broadly defined in s. 119.011(12), F.S., to include:

. . . 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

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

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

<sup>3</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.

<sup>4</sup> Section 119.07(1)(a), F.S.

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 any materials prepared by an agency in connection with official business to “perpetuate, communicate or formalize knowledge of some type”.<sup>6</sup>

The Legislature is the only entity that is authorized to create exemptions from open government requirements.<sup>7</sup> The Legislature may provide an exemption by a general law that is approved by a two-thirds vote of each house of the Legislature.<sup>8</sup> The exemption must specifically state the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature exempts from public-records requirements and those that the Legislature makes *confidential* and exempt. If the Legislature makes a record confidential and exempt, then such information may not be released by an agency to anyone other than the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

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

The Open Government Sunset Review Act (act), in s. 119.15, F.S., provides a process for the review, and repeal or reenactment of, public records exemptions.<sup>14</sup> Under Florida law, a new exemption or substantial amendment to an existing exemption shall be repealed on October 2<sup>nd</sup> of the 5<sup>th</sup> year after enactment, unless the Legislature acts to reenact the exemption.<sup>15</sup> By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, the language and statutory citation of each exemption scheduled for repeal the following year.<sup>16</sup>

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

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

<sup>9</sup> *Id.* See also *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be treated as a new exemption if it is “substantially amended,” so that the exemption is expanded to cover additional records or information, or to include meetings as well as records.

See s. 119.15(4)(b), F.S.

<sup>11</sup> FLA. CONST. art. I, s. 24(c).

<sup>12</sup> Op. Att’y Gen. Fla. 85-62 (1985).

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> This act applies to exemptions from s. 24, Art. I, of the State Constitution and s. 119.07(1), F.S., or s. 286.011, F.S.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(5)(a), F.S.

As part of the legislative review process for exemptions from public meeting and public records requirements, the Legislature is required to consider the following criteria:

- Specific records or meetings that are affected by the exemption;
- Whom the exemption uniquely affects, as opposed to the general public;
- The identifiable public purpose or goal of the exemption;
- Whether the information contained in the records or discussed in the meeting can be readily obtained by alternative means, and if so, how;
- Whether the record or meeting is protected by another exemption; and
- If there are multiple exemptions for the same type of record or meeting that would be appropriate to merge.<sup>17</sup>

The act states that an exemption may only be created, revised, or expanded if it serves an identifiable public purpose and the exemption is no broader than necessary to meet the public purpose it serves.<sup>18</sup> An identifiable public purpose is considered to be served if the exemption meets one of three specified criteria, and 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.”<sup>19</sup> The prescribed statutory criteria include whether the exemption:

- 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>20</sup>

**Examples of Existing Exemptions for Donors or Prospective Donors**

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
Enterprise Florida, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(i)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Development Finance Corporation, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(j)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Cultural Endowment Program (Department of State)	Information which, if released, would identify donors and amounts contributed.	s. 265.605(2)	Confidential and exempt from s. 119.07(1), F.S.

<sup>17</sup> Section 119.15(6)(a)1. - 6., F.S.

<sup>18</sup> Section 119.15(6)(b), F.S.

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

<sup>20</sup> *See* s. 119.15(6)(b)1. - 3., F.S.

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
	Information which, if released, would identify prospective donors.		
Direct Support Organization (University of West Florida)	Identity of donor or prospective donor of property to a DSO who desires to remain anonymous, and all identifying information.	s. 267.1732(8)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Citizen Support Organization (Fish and Wildlife Commission)	Identity of donor or prospective donor to a CSO who desires to remain anonymous and all identifying information.	s. 379.223(3)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Agricultural Museum (Department of Agriculture and Consumer Services)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information.	s. 570.903(6)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
John and Mable Ringling Museum of Art Direct Support Organization (Florida State University)	Information that, if released, would identify donors who wish to remain anonymous or prospective donors who wish to remain anonymous when the DSO has identified the prospective donor and has not obtained the name in another manner.	s. 1004.45(2)(h)	Confidential and exempt from s. 119.07(1), F.S.
Florida Prepaid College Board Direct Support Organization	Identity of donors who wish to remain anonymous. Any sensitive, personal information regarding contract beneficiaries, including identity.	s. 1009.983(4)	Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, State Constitution.

**Direct-Support Organization**

***In General***

Florida law provides for the establishment of direct-support organizations (“DSO” or “DSOs” as a means to assist state agencies in accomplishing their missions. DSOs are established as Florida corporations not for profit which are incorporated under ch. 617, F.S., and approved by the Department of State. Section 617.01401(5), F.S., defines the term “corporation not for profit” as “a corporation no part of the income or profit of which is distributable to its members, directors, or officers.”

DSOs perform a variety of services for state agencies, including:

- Raising money;
- Submitting requests for, and receiving grants from, the federal government, the state, or its political subdivisions;

- Receiving, holding, investing, and administering property;
- Assisting an agency in performing its mission; and,
- Making expenditures for the benefit of the supported agency.<sup>21</sup>

DSOs have been established in Florida to support a wide array of services and agencies, including: child abuse prevention and adoption; tourism; amateur athletics and professional sports; public guardianship; victims of crime; universities, community colleges, and school districts; the Florida National Guard; the Departments of Corrections, Juvenile Justice, Agriculture and Consumer Services, and Veterans' Affairs; and, the Florida Prepaid College Board.<sup>22</sup>

Florida Statutes generally require DSOs to:

- Operate under written contract with the supported agency;
- Be governed by a board of directors; and,
- Operate for the benefit of, and in a manner consistent with, the goals of the agency and in the best interest of the state.

***Direct-Support Organization for the Florida Historic Capitol and the Legislative Research Center and Museum***

In 2009, the Legislature enacted s. 272.136, F.S., authorizing the Legislative Research Center and Museum at the Historic Capitol and the Capitol Curator<sup>23</sup> to establish a DSO in order to provide assistance and promotional support through fundraising for the Florida Historic Capitol and the Legislative Research Center and Museum, including but not limited to, their education programs and initiatives.<sup>24</sup> The DSO established under s. 272.136, F.S., must be:

- A Florida corporation;
- Not for profit;
- Incorporated under ch. 617, F.S.; and,
- Approved by the Department of State.<sup>25</sup>

The DSO<sup>26</sup> is governed by a board of directors with a demonstrated capacity for supporting the mission of the Historic Capitol. Initial appointments to the board shall be made by the President of the Senate and the Speaker of the House of Representatives, and thereafter by the board.<sup>27</sup> The

<sup>21</sup> Sections 39.0011, 250.115, 267.1732, 267.1736, 288.1226, 288.1229, 292.055, 570.903, 744.7082, 944.802, 960.002, 985.672, 1001.453, 1004.28, 1004.70, and 1009.983, F.S.

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

<sup>23</sup> The Florida Historic Capitol Curator (curator) is appointed by and serves at the pleasure of the President of the Senate and the Speaker of the House of Representatives. The curator is responsible for: (a) promoting and encouraging state knowledge and appreciation of the Florida Historic Capitol; (b) collecting, researching, exhibiting, interpreting, preserving and protecting the history, artifacts, objects, furnishings and other materials related to the Florida Historic Capitol, other than archaeological materials; and (c) developing, directing, supervising, and maintaining the interior design and furnishings within the Florida Historic Capitol. In conjunction with the Legislative Research Center and Museum at the Historic Capitol, the curator may also assist the Florida Historic Capitol in the performance of certain monetary duties outlined in subsection (3) of s. 272.135, F.S. *See* s. 272.135, F.S.

<sup>24</sup> Chapter 2009-179, s.3, L.O.F.

<sup>25</sup> Subsection (2), of s. 272.136, F.S.

<sup>26</sup> The DSO's official name is the Florida Historic Capital Foundation, Inc., and its website is <http://www.flhistoriccapitol.gov/foundation.cfm>.

<sup>27</sup> Subsection (1), of s. 272.136, F.S.

DSO received its not-for-profit designation in October 2010, and has been receiving contributions.

If the DSO is no longer authorized or fails to comply with the requirements of s. 272.136, F.S., fails to maintain its tax-exempt status, or ceases to exist, then all funds obtained through grants, gifts, and donations in the DSO's account revert to the state and are deposited into an account designated by the Legislature.<sup>28</sup>

### **Performing Arts Centers in Florida**

According to the Florida Department of State Division of Cultural Affairs, spending on arts and cultural events in Florida generated nearly \$250 million in state and local tax revenues in 2008 and the overall return on investment by governments on art and cultural spending is 5 to 1.<sup>29</sup> There is no breakout specifically reflecting the economic impact of Florida's performing arts centers.

Florida has dozens of performing arts centers<sup>30</sup> in every region of the state, and their ownership, management and financing varies widely, according to information on their websites.

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

**Section 1** creates an undesignated section of law providing that if a donor or a prospective donor of a donation made for the benefit of a publicly owned performing arts center wishes to remain anonymous, then information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt from s. 119.07(1), F.S., and section 24(a), Art. I, of the State Constitution.

The bill defines "publicly owned performing arts center" as:

a facility consisting of at least 200 seats, owned and operated by a county or municipality, which is used and occupied to promote development of any or all of the performing, visual or fine arts or any or all matters relating thereto, and to encourage and cultivate public and professional knowledge and appreciation of the arts.<sup>31</sup>

The bill provides that the public-records exemption is subject to the provisions of the Open Government Sunset Review Act and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

<sup>28</sup> Subsection (6), of s. 272.136, F.S.

<sup>29</sup> Information provided by the Department of State's Division of Cultural Affairs in an email dated February 1, 2011. On file with the Commerce and Tourism Committee.

<sup>30</sup> An unofficial list is available at <http://funandsun.com/1tocf/artf/perfs.html>.

<sup>31</sup> Based on a list of performing arts centers provided by the Department of State's Division of Cultural Affairs, at least one appears to meet the bill's definition: the Broward Center for the Performing Arts in Fort Lauderdale, because it is owned by the county and managed by a county board.

**Section 2** of the bill creates subsection (7) of s. 272.136, F.S., providing that the identity of and all information identifying a donor or prospective donor to the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum who desires to remain anonymous is confidential and exempt from s. 119.07(1), F.S., and section 24(a), Art. I, of the State Constitution. The bill specifies that such anonymity shall be maintained in any auditor's report created pursuant to the annual financial audits required under s. 272.136(5), F.S.

The bill provides that the public-records exemption is subject to the provisions of the Open Government Sunset Review Act and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 3** of the bill expresses legislative findings that the public-records exemptions are a public necessity, in order to:

- Encourage private support for publicly owned performing arts centers and the direct-support organization;
- Promote the giving of gifts to, and the raising of private funds for, the acquisition, renovation, rehabilitation, and operation of publicly owned performing arts centers; and,
- Promote the programming and preservation of the Florida Historic Capitol and the Legislative Research Center and Museum.

According to this section, without the exemptions there could be a "chilling effect" on private donations in Florida because potential donors would be concerned that disclosure of their personal identifying information could lead to theft and threats to their personal safety and security.

**Section 4** of the bill provides an effective date of October 1, 2011.

**Other potential implications:**

If the DSO for the Legislative Research Center and Museum at the Historic Capitol is a part of the legislative branch, it is not subject to the provisions of chapter 119, F.S.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

**Vote Requirement**

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each chamber of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Because this bill creates new public-records exemptions, it requires a two-thirds vote of each chamber of the Legislature for passage.

**Statement of Public Necessity**

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Because this bill creates new public-records exemptions, it includes a public necessity statement.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Donors or prospective donors to a publicly owned performing arts center and the DSO for the Florida Historic Capitol and The Legislative Research Center and Museum would have the option of requesting anonymity, which may encourage more private entities to donate to these facilities.

**C. Government Sector Impact:**

These public-records exemptions may encourage donations, and therefore result in a financial gain to counties and municipalities that own and operate publicly owned performing arts centers.

These exemptions may similarly encourage donations that result in financial gain to the state's DSO for the Florida Historic Capitol and the Legislative Research Center and Museum.

**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:

**Barcode 109718 by Commerce and Tourism on March 9, 2011:**

Extends the public-records exemption to performing arts centers owned and operated by special districts.

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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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109718

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Amendment**

Delete line 26  
and insert:

200 seats, owned and operated by a county, municipality, or special district, which



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 14.204, Florida Statutes, is  
transferred, renumbered as section 20.51, Florida Statutes, and  
amended to read:

20.51 ~~14.204~~ Department of Agency for Enterprise  
Information Technology.—The Department of Agency for Enterprise  
Information Technology is created ~~within the Executive Office of~~  
~~the Governor.~~

(1) The head of the department is ~~agency shall be~~ the



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13 Governor and Cabinet.

14 ~~(2) The agency is a separate budget entity and is not~~  
15 ~~subject to control, supervision, or direction by the Executive~~  
16 ~~Office of the Governor, including, but not limited to,~~  
17 ~~purchasing, transactions involving real or personal property,~~  
18 ~~personnel, or budgetary matters.~~

19 (2)~~(3)~~ The department ~~agency~~ shall have an executive  
20 director who is the state's Chief Technology Information ~~Information~~ Officer  
21 and who must, at a minimum:

22 (a) Have a degree from an accredited postsecondary  
23 institution in engineering, computer science, information  
24 science, or information systems;

25 (b) Have at least 7 years of executive-level experience in  
26 managing information technology organizations; and

27 (c) Be appointed by the Governor and ~~confirmed by the~~  
28 Cabinet, subject to confirmation by the Senate, and serve at the  
29 pleasure of the Governor and Cabinet.

30 (3) The department shall consist of the following  
31 divisions:

32 (a) The Division of Strategic Procurement, which includes  
33 the development of all enterprise information technology  
34 procurement and acquisition-management systems across state  
35 agencies, whether owned or contracted, and has the objective of  
36 achieving unified accountability.

37 (b) The Division of Policy Formation, Development, and  
38 Standards, which, by rule, sets the technical and architectural  
39 expectations for current and emerging technologies and  
40 establishes new human capital skill sets, competency  
41 expectations, and total compensation for all information



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42 technology professions within state agencies.

43 (c) The Division of Implementation, which is responsible  
44 for the execution, timing, and integration of specific  
45 technology components and business domain management and the  
46 retention of agency expertise in key legacy applications in  
47 nonstrategic management systems.

48 (4) The department ~~agency~~ shall have the following duties  
49 and responsibilities:

50 (a) Develop strategies for the design, delivery, and  
51 management of the enterprise information technology services  
52 established in law.

53 (b) Monitor the delivery and management of the enterprise  
54 information technology services as established in law.

55 (c) Make recommendations to the agency head and the  
56 Legislature concerning other information technology services  
57 that should be designed, delivered, and managed as enterprise  
58 information technology services as defined in s. 282.0041.

59 (d) Plan and establish policies for managing proposed  
60 statutorily authorized enterprise information technology  
61 services, which includes:

62 1. Developing business cases that, when applicable, include  
63 the components identified in s. 287.0571;

64 2. Establishing and coordinating project-management teams;

65 3. Establishing formal risk-assessment and mitigation  
66 processes; and

67 4. Providing for independent monitoring of projects for  
68 recommended corrective actions.

69 (e) Beginning October 1, 2010, develop, publish, and  
70 biennially update a long-term strategic enterprise information



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71 technology plan that identifies and recommends strategies and  
72 opportunities to improve the delivery of cost-effective and  
73 efficient enterprise information technology services to be  
74 proposed for establishment pursuant to s. 282.0056.

75 (f) Perform duties related to the state data center system  
76 as provided in s. 282.201.

77 (g) Coordinate acquisition planning and procurement  
78 negotiations for hardware and software products and services in  
79 order to improve the efficiency and reduce the cost of  
80 enterprise information technology services.

81 (h) In consultation with the Division of Purchasing in the  
82 Department of Management Services, coordinate procurement  
83 negotiations for information technology products as defined in  
84 s. 282.0041 which will be used by multiple agencies.

85 (i) In coordination with, and through the services of, the  
86 Division of Purchasing in the Department of Management Services,  
87 establish best practices for the procurement of information  
88 technology products as defined in s. 282.0041 in order to  
89 achieve savings for the state.

90 (j) Develop information technology standards for enterprise  
91 information technology services.

92 (k) Provide annually, by December 31, recommendations to  
93 the Legislature relating to techniques for consolidating the  
94 purchase of information technology commodities and services,  
95 which result in savings for the state, and for establishing a  
96 process to achieve savings through consolidated purchases.

97 (5) The Office of Information Security shall be created  
98 within the department ~~agency~~. The department ~~agency~~ shall  
99 designate a state Chief Information Security Officer who shall



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100 oversee the office and report directly to the executive  
101 director.

102 (6) The department ~~agency~~ shall operate in a manner that  
103 ensures the participation and representation of state agencies  
104 and the Agency Chief Information Officers Council established in  
105 s. 282.315.

106 (7) The department ~~agency~~ may adopt rules to carry out its  
107 statutory duties.

108 Section 2. Subsection (1) and paragraph (g) of subsection  
109 (2) of section 17.0315, Florida Statutes, are amended to read:

110 17.0315 Financial and cash management system; task force.—

111 (1) The Chief Financial Officer, as the constitutional  
112 officer responsible for settling and approving accounts against  
113 the state and keeping all state funds pursuant to s. 4, Art. IV  
114 of the State Constitution, shall be the head of and appoint  
115 members to a task force established to develop a strategic  
116 business plan for a successor financial and cash management  
117 system. The task force shall include the executive director of  
118 the Department of ~~Agency for Enterprise~~ Information Technology  
119 and the director of the Office of Policy and Budget in the  
120 Executive Office of the Governor. Any member of the task force  
121 may appoint a designee.

122 (2) The strategic business plan for a successor financial  
123 and cash management system must:

124 (g) Be coordinated with the information technology strategy  
125 development efforts of the Department of ~~Agency for Enterprise~~  
126 Information Technology;

127 Section 3. Paragraph (e) of subsection (2) of section  
128 110.205, Florida Statutes, is amended to read:



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129 110.205 Career service; exemptions.-

130 (2) EXEMPT POSITIONS.-The exempt positions that are not  
131 covered by this part include the following:

132 (e) The Chief Information Officer in the Department of  
133 ~~Agency for Enterprise~~ Information Technology. Unless otherwise  
134 fixed by law, the Department of ~~Agency for Enterprise~~  
135 Information Technology shall set the salary and benefits of this  
136 position in accordance with the rules of the Senior Management  
137 Service.

138 Section 4. Subsections (2) and (9) of section 215.322,  
139 Florida Statutes, are amended to read:

140 215.322 Acceptance of credit cards, charge cards, debit  
141 cards, or electronic funds transfers by state agencies, units of  
142 local government, and the judicial branch.-

143 (2) A state agency as defined in s. 216.011, or the  
144 judicial branch, may accept credit cards, charge cards, debit  
145 cards, or electronic funds transfers in payment for goods and  
146 services with the prior approval of the Chief Financial Officer.  
147 If the Internet or other related electronic methods are to be  
148 used as the collection medium, the Department of ~~Agency for~~  
149 ~~Enterprise~~ Information Technology shall review and recommend to  
150 the Chief Financial Officer whether to approve the request with  
151 regard to the process or procedure to be used.

152 (9) For payment programs in which credit cards, charge  
153 cards, or debit cards are accepted by state agencies, the  
154 judicial branch, or units of local government, the Chief  
155 Financial Officer, in consultation with the Department of ~~Agency~~  
156 ~~for Enterprise~~ Information Technology, may adopt rules to  
157 establish uniform security safeguards for cardholder data and to



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158 ensure compliance with the Payment Card Industry Data Security  
159 Standards.

160 Section 5. Paragraph (c) of subsection (4) and subsection  
161 (6) of section 216.235, Florida Statutes, are amended to read:

162 216.235 Innovation Investment Program.—

163 (4) There is hereby created the State Innovation Committee,  
164 which shall have final approval authority as to which innovative  
165 investment projects submitted under this section shall be  
166 funded. Such committee shall be comprised of seven members.  
167 Appointed members shall serve terms of 1 year and may be  
168 reappointed. The committee shall include:

169 (c) The executive director of the Department of Agency for  
170 ~~Enterprise~~ Information Technology.

171 (6) Any agency developing an innovative investment project  
172 proposal that involves information technology resources may  
173 consult with and seek technical assistance from the Agency for  
174 Enterprise Information Technology. The office shall consult with  
175 the Department of Agency for Enterprise Information Technology  
176 concerning any project proposal that involves enterprise  
177 information technology resources. The department Agency for  
178 ~~Enterprise Information Technology~~ shall evaluate the project and  
179 advise the committee and review board of the technical  
180 feasibility and any transferable benefits of the proposed  
181 technology. In addition to the requirements of subsection (5),  
182 the agencies shall provide to the department Agency for  
183 ~~Enterprise Information Technology~~ any information requested by  
184 the department Agency for Enterprise Information Technology to  
185 aid in determining whether the proposed technology is  
186 appropriate for the project's success.



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187           Section 6. Subsection (4) of section 282.0041, Florida  
188 Statutes, is repealed.

189           Section 7. Section 282.0055, Florida Statutes, is amended  
190 to read:

191           282.0055 Assignment of information technology.—In order to  
192 ensure the most effective and efficient use of the state's  
193 information technology and information technology resources and  
194 notwithstanding other provisions of law to the contrary,  
195 policies for the design, planning, project management, and  
196 implementation of enterprise information technology services  
197 shall be the responsibility of the Department of Agency for  
198 ~~Enterprise~~ Information Technology for executive branch agencies  
199 created or authorized in statute to perform legislatively  
200 delegated functions. The supervision, design, delivery, and  
201 management of agency information technology shall remain within  
202 the responsibility and control of the individual state agency.

203           Section 8. Section 282.0056, Florida Statutes, is amended  
204 to read:

205           282.0056 Development of work plan; development of  
206 implementation plans; and policy recommendations.—

207           (1) For the purposes of carrying out its responsibilities  
208 under s. 282.0055, the Department of Agency for Enterprise  
209 Information Technology shall develop an annual work plan within  
210 60 days after the beginning of the fiscal year describing the  
211 activities that the department agency intends to undertake for  
212 that year, including proposed outcomes and completion  
213 timeframes. The work plan must be presented at a public hearing  
214 that includes the Agency Chief Information Officers Council,  
215 which may review and comment on the plan. The work plan must



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216 thereafter be approved by the Governor and Cabinet and submitted  
217 to the President of the Senate and the Speaker of the House of  
218 Representatives. The work plan may be amended as needed, subject  
219 to approval by the Governor and Cabinet. The work plan must, at  
220 a minimum, include proposals for:

221 (a) The development of a revised financial management  
222 infrastructure for state government which causes the  
223 reengineering of subsystem components, including, but not  
224 limited to, the legislative appropriations and planning and  
225 budget system, cash management, human resources, a successor  
226 accounting system, and strategic and tactical procurement and  
227 acquisition management;

228 (b) Creation of successor customer-relationship management  
229 systems, including, but not limited to, professional licensure,  
230 facility licensure, regulatory inspections, and compliance and  
231 monitoring systems; and

232 (c) Consolidation of all state data centers by January 1,  
233 2014.

234 (2) The Department of Information Technology ~~agency~~ may  
235 develop and submit to the President of the Senate, the Speaker  
236 of the House of Representatives, and the Governor by October 1  
237 of each year implementation plans for proposed enterprise  
238 information technology services to be established in law.

239 (3) In developing policy recommendations and implementation  
240 plans for established and proposed enterprise information  
241 technology services, the Department of Information Technology  
242 ~~agency~~ shall describe the scope of operation, conduct costs and  
243 requirements analyses, conduct an inventory of all existing  
244 information technology resources that are associated with each



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245 service, and develop strategies and timeframes for statewide  
246 migration.

247 (4) For the purpose of completing its work activities, each  
248 state agency shall provide to the Department of Information  
249 Technology ~~agency~~ all requested information, including, but not  
250 limited to, the state agency's costs, service requirements, and  
251 equipment inventories.

252 (5) Within 60 days after the end of each fiscal year, the  
253 Department of Information Technology ~~agency~~ shall report to the  
254 Governor and Cabinet, the President of the Senate, and the  
255 Speaker of the House of Representatives on what was achieved or  
256 not achieved in the prior year's work plan.

257 Section 9. Subsection (2), paragraphs (a), (b), and (c) of  
258 subsection (3), paragraph (b) and (d) of subsection (4), and  
259 subsection (5) of section 282.201, Florida Statutes, are amended  
260 to read:

261 282.201 State data center system; agency duties and  
262 limitations.—A state data center system that includes all  
263 primary data centers, other nonprimary data centers, and  
264 computing facilities, and that provides an enterprise  
265 information technology service as defined in s. 282.0041, is  
266 established.

267 (2) DEPARTMENT OF ~~AGENCY FOR ENTERPRISE~~ INFORMATION  
268 TECHNOLOGY DUTIES.—The department ~~Agency for Enterprise~~  
269 ~~Information Technology~~ shall:

270 (a) Collect and maintain information necessary for  
271 developing policies relating to the data center system,  
272 including, but not limited to, an inventory of facilities.

273 (b) Annually approve cost-recovery mechanisms and rate



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274 structures for primary data centers which recover costs through  
275 charges to customer entities.

276 (c) By December 31 of each year, submit to the Legislature  
277 recommendations to improve the efficiency and effectiveness of  
278 computing services provided by state data center system  
279 facilities. Such recommendations may include, but need not be  
280 limited to:

281 1. Policies for improving the cost-effectiveness and  
282 efficiency of the state data center system.

283 2. Infrastructure improvements supporting the consolidation  
284 of facilities or preempting the need to create additional data  
285 centers or computing facilities.

286 3. Standards for an objective, credible energy performance  
287 rating system that data center boards of trustees can use to  
288 measure state data center energy consumption and efficiency on a  
289 biannual basis.

290 4. Uniform disaster recovery standards.

291 5. Standards for primary data centers providing transparent  
292 financial data to user agencies.

293 6. Consolidation of contract practices or coordination of  
294 software, hardware, or other technology-related procurements.

295 7. Improvements to data center governance structures.

296 (d) By October 1 of each year beginning in 2009, recommend  
297 to the Governor and Legislature at least two nonprimary data  
298 centers for consolidation into a primary data center or  
299 nonprimary data center facility.

300 1. The consolidation proposal must provide a transition  
301 plan that includes:

302 a. Estimated transition costs for each data center or



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303 computing facility recommended for consolidation;

304       b. Detailed timeframes for the complete transition of each  
305 data center or computing facility recommended for consolidation;

306       c. Proposed recurring and nonrecurring fiscal impacts,  
307 including increased or decreased costs and associated budget  
308 impacts for affected budget entities;

309       d. Substantive legislative changes necessary to implement  
310 the transition; and

311       e. Identification of computing resources to be transferred  
312 and those that will remain in the agency. The transfer of  
313 resources must include all hardware, software, staff, contracted  
314 services, and facility resources performing data center  
315 management and operations, security, backup and recovery,  
316 disaster recovery, system administration, database  
317 administration, system programming, job control, production  
318 control, print, storage, technical support, help desk, and  
319 managed services but excluding application development.

320       2. Recommendations shall be based on the goal of maximizing  
321 current and future cost savings. The department ~~agency~~ shall  
322 consider the following criteria in selecting consolidations that  
323 maximize efficiencies by providing the ability to:

324       a. Consolidate purchase decisions;

325       b. Leverage expertise and other resources to gain economies  
326 of scale;

327       c. Implement state information technology policies more  
328 effectively;

329       d. Maintain or improve the level of service provision to  
330 customer entities; and

331       e. Make progress towards the state's goal of consolidating



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332 data centers and computing facilities into primary data centers.

333 3. The department ~~agency~~ shall establish workgroups as  
334 necessary to ensure participation by affected agencies in the  
335 development of recommendations related to consolidations.

336 (e) By December 31, 2010, the department ~~agency~~ shall  
337 develop and submit to the Legislature an overall consolidation  
338 plan for state data centers. The plan shall indicate a timeframe  
339 for the consolidation of all remaining nonprimary data centers  
340 into primary data centers, including existing and proposed  
341 primary data centers, by 2019.

342 (f) Develop and establish rules relating to the operation  
343 of the state data center system which comply with applicable  
344 federal regulations, including 2 C.F.R. part 225 and 45 C.F.R.  
345 The rules may address:

346 1. Ensuring that financial information is captured and  
347 reported consistently and accurately.

348 2. Requiring the establishment of service-level agreements  
349 executed between a data center and its customer entities for  
350 services provided.

351 3. Requiring annual full cost recovery on an equitable  
352 rational basis. The cost-recovery methodology must ensure that  
353 no service is subsidizing another service and may include  
354 adjusting the subsequent year's rates as a means to recover  
355 deficits or refund surpluses from a prior year.

356 4. Requiring that any special assessment imposed to fund  
357 expansion is based on a methodology that apportions the  
358 assessment according to the proportional benefit to each  
359 customer entity.

360 5. Requiring that rebates be given when revenues have



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361 exceeded costs, that rebates be applied to offset charges to  
362 those customer entities that have subsidized the costs of other  
363 customer entities, and that such rebates may be in the form of  
364 credits against future billings.

365 6. Requiring that all service-level agreements have a  
366 contract term of up to 3 years, but may include an option to  
367 renew for up to 3 additional years contingent on approval by the  
368 board, and require at least a 180-day notice of termination.

369 7. Designating any nonstate data center as a primary data  
370 center if the center:

371 a. Has an established governance structure that represents  
372 customer entities proportionally.

373 b. Maintains an appropriate cost-allocation methodology  
374 that accurately bills a customer entity based on the actual  
375 direct and indirect costs to the customer entity, and prohibits  
376 the subsidization of one customer entity's costs by another  
377 entity.

378 c. Has sufficient raised floor space, cooling, and  
379 redundant power capacity, including uninterruptible power supply  
380 and backup power generation, to accommodate the computer  
381 processing platforms and support necessary to host the computing  
382 requirements of additional customer entities.

383 8. Removing a nonstate data center from primary data center  
384 designation if the nonstate data center fails to meet standards  
385 necessary to ensure that the state's data is maintained pursuant  
386 to subparagraph 7.

387 (3) STATE AGENCY DUTIES.—

388 (a) For the purpose of completing its work activities as  
389 described in subsection (1), each state agency shall provide to



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390 the Department of ~~Agency for Enterprise~~ Information Technology  
391 all requested information and any other information relevant to  
392 the agency's ability to effectively transition its computer  
393 services into a primary data center. The agency shall also  
394 participate as required in workgroups relating to specific  
395 consolidation planning and implementation tasks as assigned by  
396 the department ~~Agency for Enterprise Information Technology~~ and  
397 determined necessary to accomplish consolidation goals.

398 (b) Each state agency shall submit to the department ~~Agency~~  
399 ~~for Enterprise Information Technology~~ information relating to  
400 its data centers and computing facilities as required in  
401 instructions issued by July 1 of each year by the Department of  
402 ~~Agency for Enterprise~~ Information Technology. The information  
403 required may include:

- 404 1. Amount of floor space used and available.
- 405 2. Numbers and capacities of mainframes and servers.
- 406 3. Storage and network capacity.
- 407 4. Amount of power used and the available capacity.
- 408 5. Estimated expenditures by service area, including  
409 hardware and software, numbers of full-time equivalent  
410 positions, personnel turnover, and position reclassifications.
- 411 6. A list of contracts in effect for the fiscal year,  
412 including, but not limited to, contracts for hardware, software  
413 and maintenance, including the expiration date, the contract  
414 parties, and the cost of the contract.
- 415 7. Service-level agreements by customer entity.

416 (c) The chief information officer of each state agency  
417 shall assist the Department of ~~Agency for Enterprise~~ Information  
418 Technology at the department's request ~~of the Agency for~~



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419 ~~Enterprise Information Technology.~~

420 (4) AGENCY LIMITATIONS.—

421 (b) Exceptions to the limitations in subparagraphs (a)1.,  
422 2., and 4. may be granted by the Department of Agency for  
423 ~~Enterprise~~ Information Technology if there is insufficient  
424 capacity in a primary data center to absorb the workload  
425 associated with agency computing services.

426 1. A request for an exception must be submitted in writing  
427 to the Department of Agency for Enterprise Information  
428 Technology. The department agency must accept, accept with  
429 conditions, or deny the request within 60 days after receipt of  
430 the written request. The department's agency's decision is not  
431 subject to chapter 120.

432 2. At a minimum, the department agency may not approve a  
433 request unless it includes:

434 a. Documentation approved by the primary data center's  
435 board of trustees which confirms that the center cannot meet the  
436 capacity requirements of the agency requesting the exception  
437 within the current fiscal year.

438 b. A description of the capacity requirements of the agency  
439 requesting the exception.

440 c. Documentation from the agency demonstrating why it is  
441 critical to the agency's mission that the expansion or transfer  
442 must be completed within the fiscal year rather than when  
443 capacity is established at a primary data center.

444 (d) Upon the termination of or transfer of agency computing  
445 services from the primary data center, the primary data center  
446 shall require information sufficient to determine compliance  
447 with this section. If a primary data center determines that an



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448 agency is in violation of this section, it shall report the  
449 violation to the Department of Agency for Enterprise Information  
450 Technology.

451 (5) RULES.—The Department of Agency for Enterprise  
452 Information Technology ~~may is authorized to~~ adopt rules pursuant  
453 ~~to ss. 120.536(1) and 120.54~~ to administer the provisions of  
454 this part relating to the state data center system including the  
455 primary data centers.

456 Section 10. Paragraphs (c), (d), (h), and (i) of subsection  
457 (1), paragraph (e) of subsection (2), paragraph (b), (e), (h),  
458 and (k) of subsection (3) of section 282.203, Florida Statutes,  
459 are amended to read:

460 282.203 Primary data centers.—

461 (1) DATA CENTER DUTIES.—Each primary data center shall:

462 (c) Comply with rules adopted by the Department of Agency  
463 ~~for Enterprise~~ Information Technology, pursuant to this section,  
464 and coordinate with the agency in the consolidation of data  
465 centers.

466 (d) Provide transparent financial statements to customer  
467 entities, the center's board of trustees, and the Department of  
468 ~~Agency for Enterprise~~ Information Technology. The financial  
469 statements shall be provided as follows:

470 1. Annually, by July 30 for the current fiscal year and by  
471 December 1 for the subsequent fiscal year, the data center must  
472 provide the total annual budgeted costs by major expenditure  
473 category, including, but not limited to, salaries, expense,  
474 operating capital outlay, contracted services, or other  
475 personnel services, which directly relate to the provision of  
476 each service and which separately indicate the administrative



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477 overhead allocated to each service.

478 2. Annually, by July 30 for the current fiscal year and by  
479 December 1 for the subsequent fiscal year, the data center must  
480 provide total projected billings for each customer entity which  
481 are required to recover the costs of the data center.

482 3. Annually, by January 31, the data center must provide  
483 updates of the financial statements required under subparagraphs  
484 1. and 2. for the current fiscal year.

485 4. By February 15, for proposed legislative budget  
486 increases, the data center must provide updates of the financial  
487 statements required under subparagraphs 1. and 2. for the  
488 subsequent fiscal year.

489  
490 The financial information required under subparagraphs 1., 2.,  
491 and 3. must be based on current law and current appropriations.

492 (h) Develop a business continuity plan and conduct a live  
493 exercise of the plan at least annually. The plan must be  
494 approved by the board and the Department of Agency for  
495 ~~Enterprise~~ Information Technology.

496 (i) Enter into a service-level agreement with each customer  
497 entity to provide services as defined and approved by the board  
498 in compliance with rules of the Department of Agency for  
499 ~~Enterprise~~ Information Technology. A service-level agreement may  
500 not have a term exceeding 3 years but may include an option to  
501 renew for up to 3 years contingent on approval by the board.

502 1. A service-level agreement, at a minimum, must:

503 a. Identify the parties and their roles, duties, and  
504 responsibilities under the agreement;

505 b. Identify the legal authority under which the service-



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506 level agreement was negotiated and entered into by the parties;  
507 c. State the duration of the contractual term and specify  
508 the conditions for contract renewal;  
509 d. Prohibit the transfer of computing services between  
510 primary data center facilities without at least 180 days' notice  
511 of service cancellation;  
512 e. Identify the scope of work;  
513 f. Identify the products or services to be delivered with  
514 sufficient specificity to permit an external financial or  
515 performance audit;  
516 g. Establish the services to be provided, the business  
517 standards that must be met for each service, the cost of each  
518 service, and the process by which the business standards for  
519 each service are to be objectively measured and reported;  
520 h. Identify applicable funds and funding streams for the  
521 services or products under contract;  
522 i. Provide a timely billing methodology for recovering the  
523 cost of services provided to the customer entity;  
524 j. Provide a procedure for modifying the service-level  
525 agreement to address changes in projected costs of service;  
526 k. Provide that a service-level agreement may be terminated  
527 by either party for cause only after giving the other party and  
528 the department ~~Agency for Enterprise Information Technology~~  
529 notice in writing of the cause for termination and an  
530 opportunity for the other party to resolve the identified cause  
531 within a reasonable period; and  
532 1. Provide for mediation of disputes by the Division of  
533 Administrative Hearings pursuant to s. 120.573.  
534 2. A service-level agreement may include:



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535 a. A dispute resolution mechanism, including alternatives  
536 to administrative or judicial proceedings;

537 b. The setting of a surety or performance bond for service-  
538 level agreements entered into with nonstate agency primary data  
539 centers, which may be designated by the department ~~Agency for~~  
540 ~~Enterprise Information Technology~~; or

541 c. Additional terms and conditions as determined advisable  
542 by the parties if such additional terms and conditions do not  
543 conflict with the requirements of this section or rules adopted  
544 by the department ~~Agency for Enterprise Information Technology~~.

545 3. The failure to execute a service-level agreement within  
546 60 days after service commencement shall, in the case of an  
547 existing customer entity, result in a continuation of the terms  
548 of the service-level agreement from the prior fiscal year,  
549 including any amendments that were formally proposed to the  
550 customer entity by the primary data center within the 3 months  
551 before service commencement, and a revised cost-of-service  
552 estimate. If a new customer entity fails to execute an agreement  
553 within 60 days after service commencement, the data center may  
554 cease services.

555 (2) BOARD OF TRUSTEES.—Each primary data center shall be  
556 headed by a board of trustees as defined in s. 20.03.

557 (e) The executive director of the Department of ~~Agency for~~  
558 ~~Enterprise~~ Information Technology shall be the advisor to the  
559 board.

560 (3) BOARD DUTIES.—Each board of trustees of a primary data  
561 center shall:

562 (b) Establish procedures for the primary data center to  
563 ensure that budgeting and accounting procedures, cost-recovery



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564 methodologies, and operating procedures are in compliance with  
565 laws governing the state data center system, rules adopted by  
566 the Department of ~~Agency for Enterprise~~ Information Technology,  
567 and applicable federal regulations, including 2 C.F.R. part 225  
568 and 45 C.F.R.

569 (e) Ensure the sufficiency and transparency of the primary  
570 data center financial information by:

571 1. Establishing policies that ensure that cost-recovery  
572 methodologies, billings, receivables, expenditure, budgeting,  
573 and accounting data are captured and reported timely,  
574 consistently, accurately, and transparently and, upon adoption  
575 of rules by the Department of ~~Agency for Enterprise~~ Information  
576 Technology, are in compliance with such rules.

577 2. Requiring execution of service-level agreements by the  
578 data center and each customer entity for services provided by  
579 the data center to the customer entity.

580 3. Requiring cost recovery for the full cost of services,  
581 including direct and indirect costs. The cost-recovery  
582 methodology must ensure that no service is subsidizing another  
583 service without an affirmative vote of approval by the customer  
584 entity providing the subsidy.

585 4. Establishing special assessments to fund expansions  
586 based on a methodology that apportions the assessment according  
587 to the proportional benefit to each customer entity.

588 5. Providing rebates to customer entities when revenues  
589 exceed costs and offsetting charges to those who have subsidized  
590 other customer entity costs based on actual prior year final  
591 expenditures. Rebates may be credited against future billings.

592 6. Approving all expenditures committing over \$50,000 in a



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593 fiscal year.

594 7. Projecting costs and revenues at the beginning of the  
595 third quarter of each fiscal year through the end of the fiscal  
596 year. If in any given fiscal year the primary data center is  
597 projected to earn revenues that are below costs for that fiscal  
598 year after first reducing operating costs where possible, the  
599 board shall implement any combination of the following remedies  
600 to cover the shortfall:

601 a. The board may direct the primary data center to adjust  
602 current year chargeback rates through the end of the fiscal year  
603 to cover the shortfall. The rate adjustments shall be  
604 implemented using actual usage rate and billing data from the  
605 first three quarters of the fiscal year and the same principles  
606 used to set rates for the fiscal year.

607 b. The board may direct the primary data center to levy  
608 one-time charges on all customer entities to cover the  
609 shortfall. The one-time charges shall be implemented using  
610 actual usage rate and billing data from the first three quarters  
611 of the fiscal year and the same principles used to set rates for  
612 the fiscal year.

613 c. The customer entities represented by each board member  
614 may provide payments to cover the shortfall in proportion to the  
615 amounts each entity paid in the prior fiscal year.

616 (h) By July 1 of each year, submit to the Department of  
617 ~~Agency for Enterprise~~ Information Technology proposed cost-  
618 recovery mechanisms and rate structures for all customer  
619 entities for the fiscal year including the cost-allocation  
620 methodology for administrative expenditures and the calculation  
621 of administrative expenditures as a percent of total costs.



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622 (k) Coordinate with other primary data centers and the  
623 Department of Agency for Enterprise Information Technology in  
624 order to consolidate purchases of goods and services and lower  
625 the cost of providing services to customer entities.

626 Section 11. Subsection (2) of section 282.204, Florida  
627 Statutes, is amended to read:

628 282.204 Northwood Shared Resource Center.—The Northwood  
629 Shared Resource Center is an agency established within the  
630 Department of Children and Family Services for administrative  
631 purposes only.

632 (2) The center shall be headed by a board of trustees as  
633 provided in s. 282.203, who shall comply with all requirements  
634 of that section related to the operation of the center and with  
635 the rules of the Department of Agency for Enterprise Information  
636 Technology related to the design and delivery of enterprise  
637 information technology services.

638 Section 12. Subsection (2) of section 282.205, Florida  
639 Statutes, is amended to read:

640 282.205 Southwood Shared Resource Center.—The Southwood  
641 Shared Resource Center is an agency established within the  
642 department for administrative purposes only.

643 (2) The center shall be headed by a board of trustees as  
644 provided in s. 282.203, who shall comply with all requirements  
645 of that section related to the operation of the center and with  
646 the rules of the Department of Agency for Enterprise Information  
647 Technology related to the design and delivery of enterprise  
648 information technology services.

649 Section 13. Paragraphs (b) and (e) of subsection (2) of  
650 section 282.3055, Florida Statutes, are amended to read:



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651           282.3055 Agency chief information officer; appointment;  
652 duties.—

653           (2) The duties of the agency chief information officer  
654 include, but are not limited to:

655           (b) Implementing agency information technology planning and  
656 management procedures, guidelines, and standards that are  
657 consistent with the procedures and standards adopted by the  
658 Department of Agency for Enterprise Information Technology.

659           (e) Assisting the Department of Agency for Enterprise  
660 Information Technology in the development of strategies for  
661 implementing the enterprise information technology services  
662 established in law and developing recommendations for enterprise  
663 information technology policy.

664           Section 14. Subsections (1) and (3) of section 282.315,  
665 Florida Statutes, are amended to read:

666           282.315 Agency Chief Information Officers Council;  
667 creation.—The Legislature finds that enhancing communication,  
668 consensus building, coordination, and facilitation with respect  
669 to issues concerning enterprise information technology resources  
670 are essential to improving the management of such resources.

671           (1) There is created an Agency Chief Information Officers  
672 Council to:

673           (a) Enhance communication and collaboration among the  
674 Agency Chief Information Officers and the Department of Agency  
675 ~~for Enterprise~~ Information Technology.

676           (b) Identify and recommend best practices that are  
677 characteristic of highly successful technology organizations, as  
678 well as exemplary information technology applications for use by  
679 state agencies, and assist the Department of Agency for



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680 ~~Enterprise~~ Information Technology in developing strategies for  
681 implementing the enterprise information technology services  
682 established in law and developing recommendations for enterprise  
683 information technology policy.

684 (c) Identify efficiency opportunities among state agencies  
685 and make recommendations for action to the Department of Agency  
686 ~~for Enterprise~~ Information Technology. This includes  
687 recommendations relating to the consolidation of agency data  
688 center and computing facilities, including operational policies,  
689 procedures and standards for the consolidated facilities, and  
690 procedures and standards for planning the migration to  
691 consolidated facilities.

692 (d) Assist the Department of Agency ~~for Enterprise~~  
693 Information Technology in identifying critical enterprise  
694 information technology issues and, when appropriate, make  
695 recommendations for solving enterprise resource planning and  
696 management deficiencies.

697 (e) Annually, by October 1, identify information technology  
698 products, as defined in s. 282.0041, which, if purchased in a  
699 consolidated manner, would result in savings to the state, and  
700 develop recommendations regarding a process for consolidating  
701 such purchases. The council shall transmit its recommendations  
702 to the Department of Agency ~~for Enterprise~~ Information  
703 Technology.

704 (3) The Department of Agency ~~for Enterprise~~ Information  
705 Technology shall provide administrative support to the council.

706 Section 15. Subsection (3), paragraph (c), (d), and (f) of  
707 subsection (4), subsection (6), and subsection (7) of section  
708 282.318, Florida Statutes, are amended to read:



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709           282.318 Enterprise security of data and information  
710 technology.—

711           (3) The Office of Information Security within the  
712 Department of Agency for Enterprise Information Technology is  
713 responsible for establishing rules and publishing guidelines for  
714 ensuring an appropriate level of security for all data and  
715 information technology resources for executive branch agencies.  
716 The office shall also perform the following duties and  
717 responsibilities:

718           (a) Develop, and annually update by February 1, an  
719 enterprise information security strategic plan that includes  
720 security goals and objectives for the strategic issues of  
721 information security policy, risk management, training, incident  
722 management, and survivability planning.

723           (b) Develop enterprise security rules and published  
724 guidelines for:

725           1. Comprehensive risk analyses and information security  
726 audits conducted by state agencies.

727           2. Responding to suspected or confirmed information  
728 security incidents, including suspected or confirmed breaches of  
729 personal information or exempt data.

730           3. Agency security plans, including strategic security  
731 plans and security program plans.

732           4. The recovery of information technology and data  
733 following a disaster.

734           5. The managerial, operational, and technical safeguards  
735 for protecting state government data and information technology  
736 resources.

737           (c) Assist agencies in complying with the provisions of



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738 this section.

739 (d) Pursue appropriate funding for the purpose of enhancing  
740 domestic security.

741 (e) Provide training for agency information security  
742 managers.

743 (f) Annually review the strategic and operational  
744 information security plans of executive branch agencies.

745 (4) To assist the Office of Information Security in  
746 carrying out its responsibilities, each agency head shall, at a  
747 minimum:

748 (c) Conduct, and update every 3 years, a comprehensive risk  
749 analysis to determine the security threats to the data,  
750 information, and information technology resources of the agency.  
751 The risk analysis information is confidential and exempt from  
752 the provisions of s. 119.07(1), except that such information  
753 shall be available to the Auditor General and the Department of  
754 ~~Agency for Enterprise~~ Information Technology for performing  
755 postauditing duties.

756 (d) Develop, and periodically update, written internal  
757 policies and procedures, which include procedures for notifying  
758 the office when a suspected or confirmed breach, or an  
759 information security incident, occurs. Such policies and  
760 procedures must be consistent with the rules and guidelines  
761 established by the office to ensure the security of the data,  
762 information, and information technology resources of the agency.  
763 The internal policies and procedures that, if disclosed, could  
764 facilitate the unauthorized modification, disclosure, or  
765 destruction of data or information technology resources are  
766 confidential information and exempt from s. 119.07(1), except



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767 that such information shall be available to the Auditor General  
768 and the Department of Agency for Enterprise Information  
769 Technology for performing postauditing duties.

770 (f) Ensure that periodic internal audits and evaluations of  
771 the agency's security program for the data, information, and  
772 information technology resources of the agency are conducted.  
773 The results of such audits and evaluations are confidential  
774 information and exempt from s. 119.07(1), except that such  
775 information shall be available to the Auditor General and the  
776 Department of Agency for Enterprise Information Technology for  
777 performing postauditing duties.

778 (6) The Department of Agency for Enterprise Information  
779 Technology may adopt rules relating to information security and  
780 to administer the provisions of this section.

781 ~~(7) By December 31, 2010, the Agency for Enterprise~~  
782 ~~Information Technology shall develop, and submit to the~~  
783 ~~Governor, the President of the Senate, and the Speaker of the~~  
784 ~~House of Representatives a proposed implementation plan for~~  
785 ~~information technology security. The agency shall describe the~~  
786 ~~scope of operation, conduct costs and requirements analyses,~~  
787 ~~conduct an inventory of all existing security information~~  
788 ~~technology resources, and develop strategies, timeframes, and~~  
789 ~~resources necessary for statewide migration.~~

790 Section 16. Subsections (1) through (3) of section 282.33,  
791 Florida Statutes, are amended to read:

792 282.33 Objective standards for data center energy  
793 efficiency.—

794 (1) ~~By July 1, 2009, The~~ Department of Agency for  
795 ~~Enterprise~~ Information Technology shall define objective



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796 standards for:

797 (a) Measuring data center energy consumption and  
798 efficiency, including, but not limited to, airflow and cooling,  
799 power consumption and distribution, and environmental control  
800 systems in a data center facility.

801 (b) Calculating total cost of ownership of energy-efficient  
802 information technology products, including initial purchase,  
803 installation, ongoing operation and maintenance, and disposal  
804 costs over the life cycle of the product.

805 (2) State shared resource data centers and other data  
806 centers that the Department of Agency for Enterprise Information  
807 Technology has determined will be recipients for consolidating  
808 data centers, which are designated by the department Agency for  
809 ~~Enterprise Information Technology~~, shall evaluate their data  
810 center facilities for energy efficiency using the standards  
811 established in this section.

812 (a) Results of these evaluations shall be reported to the  
813 department Agency for Enterprise Information Technology, the  
814 President of the Senate, and the Speaker of the House of  
815 Representatives. Reports shall enable the tracking of energy  
816 performance over time and comparisons between facilities.

817 (b) By December 31, 2010, and biennially thereafter, the  
818 department Agency for Enterprise Information Technology shall  
819 submit to the Legislature recommendations for reducing energy  
820 consumption and improving the energy efficiency of state primary  
821 data centers.

822 (3) The primary means of achieving maximum energy savings  
823 across all state data centers and computing facilities shall be  
824 the consolidation of data centers and computing facilities as



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825 determined by the Department of ~~Agency for Enterprise~~  
826 Information Technology. State data centers and computing  
827 facilities in the state data center system shall be established  
828 as an enterprise information technology service as defined in s.  
829 282.0041. The department ~~Agency for Enterprise Information~~  
830 ~~Technology~~ shall make recommendations on consolidating state  
831 data centers and computing facilities, pursuant to s. 282.0056,  
832 by December 31, 2009.

833 Section 17. Subsection (2) through (5), (7), and (9)  
834 through (11) of section 282.34, Florida Statutes, are amended to  
835 read:

836 282.34 Statewide e-mail service.—A state e-mail system that  
837 includes the delivery and support of e-mail, messaging, and  
838 calendaring capabilities is established as an enterprise  
839 information technology service as defined in s. 282.0041. The  
840 service shall be designed to meet the needs of all executive  
841 branch agencies. The primary goals of the service are to  
842 minimize the state investment required to establish, operate,  
843 and support the statewide service; reduce the cost of current e-  
844 mail operations and the number of duplicative e-mail systems;  
845 and eliminate the need for each state agency to maintain its own  
846 e-mail staff.

847 (2) The Department of ~~Agency for Enterprise~~ Information  
848 Technology, in consultation with the Southwood Shared Resource  
849 Center, shall establish and coordinate a multiagency project  
850 team to develop a competitive solicitation for establishing the  
851 statewide e-mail service.

852 (a) The Southwood Shared Resource Center shall issue the  
853 competitive solicitation by August 31, 2010, with vendor



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854 responses required by October 15, 2010. Issuance of the  
855 competitive solicitation does not obligate the agency and the  
856 center to conduct further negotiations or to execute a contract.  
857 The decision to conduct or conclude negotiations, or execute a  
858 contract, must be made solely at the discretion of the agency.

859 (b) The competitive solicitation must include detailed  
860 specifications describing:

861 1. The current e-mail approach for state agencies and the  
862 specific business objectives met by the present system.

863 2. The minimum functional requirements necessary for  
864 successful statewide implementation and the responsibilities of  
865 the prospective service provider and the agency.

866 3. The form and required content for submitted proposals,  
867 including, but not limited to, a description of the proposed  
868 system and its internal and external sourcing options, a 5-year  
869 life-cycle-based pricing based on cost per mailbox per month,  
870 and a decommissioning approach for current e-mail systems; an  
871 implementation schedule and implementation services; a  
872 description of e-mail account management, help desk, technical  
873 support, and user provisioning services; disaster recovery and  
874 backup and restore capabilities; antispam and antivirus  
875 capabilities; remote access and mobile messaging capabilities;  
876 and staffing requirements.

877 (c) Other optional requirements specifications may be  
878 included in the competitive solicitation if not in conflict with  
879 the primary goals of the statewide e-mail service.

880 (d) The competitive solicitation must permit alternative  
881 financial and operational models to be proposed, including, but  
882 not limited to:



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- 883           1. Leasing or usage-based subscription fees;
- 884           2. Installing and operating the e-mail service within the  
885 Southwood Shared Resource Center or in a data center operated by  
886 an external service provider; or
- 887           3. Provisioning the e-mail service as an Internet-based  
888 offering provided to state agencies. Specifications for proposed  
889 models must be optimized to meet the primary goals of the e-mail  
890 service.
- 891           (3) By December 31, 2010, or within 1 month after  
892 negotiations are complete, whichever is later, the multiagency  
893 project team and the Department of Agency for Enterprise  
894 Information Technology shall prepare a business case analysis  
895 containing its recommendations for procuring the statewide e-  
896 mail service for submission to the Governor and Cabinet, the  
897 President of the Senate, and the Speaker of the House of  
898 Representatives. The business case is not subject to challenge  
899 or protest pursuant to chapter 120. The business case must  
900 include, at a minimum:
- 901           (a) An assessment of the major risks that must be managed  
902 for each proposal compared to the risks for the current state  
903 agency e-mail system and the major benefits that are associated  
904 with each.
- 905           (b) A cost-benefit analysis that estimates all major cost  
906 elements associated with each sourcing option, focusing on the  
907 nonrecurring and recurring life-cycle costs of each option. The  
908 analysis must include a comparison of the estimated total 5-year  
909 life-cycle cost of the current agency e-mail systems versus each  
910 enterprise e-mail sourcing option in order to determine the  
911 feasibility of funding the migration and operation of the



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912 statewide e-mail service and the overall level of savings that  
913 can be expected. The 5-year life-cycle costs for each state  
914 agency must include, but are not limited to:

915 1. The total recurring operating costs of the current  
916 agency e-mail systems, including monthly mailbox costs,  
917 staffing, licensing and maintenance costs, hardware, and other  
918 related e-mail product and service costs.

919 2. An estimate of nonrecurring hardware and software  
920 refresh, upgrade, or replacement costs based on the expected 5-  
921 year obsolescence of current e-mail software products and  
922 equipment through the 2014 fiscal year, and the basis for the  
923 estimate.

924 3. An estimate of recurring costs associated with the  
925 energy consumption of current agency e-mail equipment, and the  
926 basis for the estimate.

927 4. Any other critical costs associated with the current  
928 agency e-mail systems which can reasonably be estimated and  
929 included in the business case analysis.

930 (c) A comparison of the migrating schedules of each  
931 sourcing option to the statewide e-mail service, including the  
932 approach and schedule for the decommissioning of all current  
933 state agency e-mail systems beginning with phase 1 and phase 2  
934 as provided in subsection (4).

935 (4) All agencies must be completely migrated to the  
936 statewide e-mail service as soon as financially and  
937 operationally feasible, but no later than June 30, 2015.

938 (a) The following statewide e-mail service implementation  
939 schedule is established for state agencies:

940 1. Phase 1.—The following agencies must be completely



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941 migrated to the statewide e-mail system by June 30, 2012: the  
942 Department of Agency for Enterprise Information Technology; the  
943 Department of Community Affairs, including the Division of  
944 Emergency Management; the Department of Corrections; the  
945 Department of Health; the Department of Highway Safety and Motor  
946 Vehicles; the Department of Management Services, including the  
947 Division of Administrative Hearings, the Division of Retirement,  
948 the Commission on Human Relations, and the Public Employees  
949 Relations Commission; the Southwood Shared Resource Center; and  
950 the Department of Revenue.

951 2. Phase 2.—The following agencies must be completely  
952 migrated to the statewide e-mail system by June 30, 2013: the  
953 Department of Business and Professional Regulation; the  
954 Department of Education, including the Board of Governors; the  
955 Department of Environmental Protection; the Department of  
956 Juvenile Justice; the Department of the Lottery; the Department  
957 of State; the Department of Law Enforcement; the Department of  
958 Veterans' Affairs; the Judicial Administration Commission; the  
959 Public Service Commission; and the Statewide Guardian Ad Litem  
960 Office.

961 3. Phase 3.—The following agencies must be completely  
962 migrated to the statewide e-mail system by June 30, 2014: the  
963 Agency for Health Care Administration; the Agency for Workforce  
964 Innovation; the Department of Financial Services, including the  
965 Office of Financial Regulation and the Office of Insurance  
966 Regulation; the Department of Agriculture and Consumer Services;  
967 the Executive Office of the Governor; the Department of  
968 Transportation; the Fish and Wildlife Conservation Commission;  
969 the Agency for Persons With Disabilities; the Northwood Shared



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970 Resource Center; and the State Board of Administration.

971 4. Phase 4.—The following agencies must be completely  
972 migrated to the statewide e-mail system by June 30, 2015: the  
973 Department of Children and Family Services; the Department of  
974 Citrus; the Department of Elderly Affairs; and the Department of  
975 Legal Affairs.

976 (b) Agency requests to modify their scheduled implementing  
977 date must be submitted in writing to the Department of Agency  
978 ~~for Enterprise~~ Information Technology. Any exceptions or  
979 modifications to the schedule must be approved by the Department  
980 of Agency for Enterprise Information Technology based only on  
981 the following criteria:

982 1. Avoiding nonessential investment in agency e-mail  
983 hardware or software refresh, upgrade, or replacement.

984 2. Avoiding nonessential investment in new software or  
985 hardware licensing agreements, maintenance or support  
986 agreements, or e-mail staffing for current e-mail systems.

987 3. Resolving known agency e-mail problems through migration  
988 to the statewide e-mail service.

989 4. Accommodating unique agency circumstances that require  
990 an acceleration or delay of the implementation date.

991 (5) In order to develop the implementation plan for the  
992 statewide e-mail service, the Department of Agency for  
993 ~~Enterprise~~ Information Technology shall establish and coordinate  
994 a statewide e-mail project team. The agency shall also consult  
995 with and, as necessary, form workgroups consisting of agency e-  
996 mail management staff, agency chief information officers, agency  
997 budget directors, and other administrative staff. The statewide  
998 e-mail implementation plan must be submitted to the Governor,



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999 the President of the Senate, and the Speaker of the House of  
1000 Representatives by July 1, 2011.

1001 (7) Exceptions to paragraphs (6) (a), (b), and (c) may be  
1002 granted by the Department of Agency for Enterprise Information  
1003 Technology only if the Southwood Shared Resource Center is  
1004 unable to meet agency business requirements for the e-mail  
1005 service, and if such requirements are essential to maintain  
1006 agency operations. Requests for exceptions must be submitted in  
1007 writing to the Agency for Enterprise Information Technology and  
1008 include documented confirmation by the Southwood Shared Resource  
1009 Center board of trustees that it cannot meet the requesting  
1010 agency's e-mail service requirements.

1011 (9) The Department of Agency for Enterprise Information  
1012 Technology shall adopt rules to standardize the format for state  
1013 agency e-mail addresses.

1014 (10) State agencies must fully cooperate with the  
1015 Department of Agency for Enterprise Information Technology in  
1016 the performance of its responsibilities established in this  
1017 section.

1018 (11) The Department of Agency for Enterprise Information  
1019 Technology shall recommend changes to an agency's scheduled date  
1020 for migration to the statewide e-mail service pursuant to this  
1021 section, annually by December 31, until migration to the  
1022 statewide service is complete.

1023 Section 18. Subsection (22) of section 287.057, Florida  
1024 Statutes, is amended to read:

1025 287.057 Procurement of commodities or contractual  
1026 services.—

1027 (22) The department, in consultation with the Department of



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1028 ~~Agency for Enterprise~~ Information Technology and the  
1029 Comptroller, shall develop a program for online procurement of  
1030 commodities and contractual services. To enable the state to  
1031 promote open competition and to leverage its buying power,  
1032 agencies shall participate in the online procurement program,  
1033 and eligible users may participate in the program. Only vendors  
1034 prequalified as meeting mandatory requirements and  
1035 qualifications criteria may participate in online procurement.

1036 (a) The department, in consultation with the Department of  
1037 Information Technology ~~agency~~, may contract for equipment and  
1038 services necessary to develop and implement online procurement.

1039 (b) The department, in consultation with the Department of  
1040 Information Technology ~~agency~~, shall adopt rules, pursuant to  
1041 ss. 120.536(1) and 120.54, to administer the program for online  
1042 procurement. The rules shall include, but not be limited to:

1043 1. Determining the requirements and qualification criteria  
1044 for prequalifying vendors.

1045 2. Establishing the procedures for conducting online  
1046 procurement.

1047 3. Establishing the criteria for eligible commodities and  
1048 contractual services.

1049 4. Establishing the procedures for providing access to  
1050 online procurement.

1051 5. Determining the criteria warranting any exceptions to  
1052 participation in the online procurement program.

1053 (c) The department may impose and shall collect all fees  
1054 for the use of the online procurement systems.

1055 1. The fees may be imposed on an individual transaction  
1056 basis or as a fixed percentage of the cost savings generated. At



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1057 a minimum, the fees must be set in an amount sufficient to cover  
1058 the projected costs of the services, including administrative  
1059 and project service costs in accordance with the policies of the  
1060 department.

1061 2. If the department contracts with a provider for online  
1062 procurement, the department, pursuant to appropriation, shall  
1063 compensate the provider from the fees after the department has  
1064 satisfied all ongoing costs. The provider shall report  
1065 transaction data to the department each month so that the  
1066 department may determine the amount due and payable to the  
1067 department from each vendor.

1068 3. All fees that are due and payable to the state on a  
1069 transactional basis or as a fixed percentage of the cost savings  
1070 generated are subject to s. 215.31 and must be remitted within  
1071 40 days after receipt of payment for which the fees are due. For  
1072 fees that are not remitted within 40 days, the vendor shall pay  
1073 interest at the rate established under s. 55.03(1) on the unpaid  
1074 balance from the expiration of the 40-day period until the fees  
1075 are remitted.

1076 4. All fees and surcharges collected under this paragraph  
1077 shall be deposited in the Operating Trust Fund as provided by  
1078 law.

1079 Section 19. Subsection (4) of section 445.011, Florida  
1080 Statutes, is amended to read:

1081 445.011 Workforce information systems.—

1082 (4) Workforce Florida, Inc., shall coordinate development  
1083 and implementation of workforce information systems with the  
1084 executive director of the Department of ~~Agency for Enterprise~~  
1085 Information Technology to ensure compatibility with the state's



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1086 information system strategy and enterprise architecture.  
1087 Section 20. Subsections (2) and (4) of section 445.045,  
1088 Florida Statutes, are amended to read:  
1089 445.045 Development of an Internet-based system for  
1090 information technology industry promotion and workforce  
1091 recruitment.—  
1092 (2) Workforce Florida, Inc., shall coordinate with the  
1093 Department of Agency for Enterprise Information Technology and  
1094 the Agency for Workforce Innovation to ensure links, where  
1095 feasible and appropriate, to existing job information websites  
1096 maintained by the state and state agencies and to ensure that  
1097 information technology positions offered by the state and state  
1098 agencies are posted on the information technology website.  
1099 (4) ~~(a)~~ Workforce Florida, Inc., shall coordinate  
1100 development and maintenance of the website under this section  
1101 with the executive director of the Department of Agency for  
1102 ~~Enterprise~~ Information Technology to ensure compatibility with  
1103 the state's information system strategy and enterprise  
1104 architecture.  
1105 (a) ~~(b)~~ Workforce Florida, Inc., may enter into an agreement  
1106 with the Department of Agency for Enterprise Information  
1107 Technology, the Agency for Workforce Innovation, or any other  
1108 public agency with the requisite information technology  
1109 expertise for the provision of design, operating, or other  
1110 technological services necessary to develop and maintain the  
1111 website.  
1112 (b) ~~(c)~~ Workforce Florida, Inc., may procure services  
1113 necessary to implement the provisions of this section, if it  
1114 employs competitive processes, including requests for proposals,



262522

1115 competitive negotiation, and other competitive processes to  
1116 ensure that the procurement results in the most cost-effective  
1117 investment of state funds.

1118 Section 21. Paragraph (b) of subsection (18) of section  
1119 668.50, Florida Statutes, is amended to read:

1120 668.50 Uniform Electronic Transaction Act.—

1121 (18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY  
1122 GOVERNMENTAL AGENCIES.—

1123 (b) To the extent that a governmental agency uses  
1124 electronic records and electronic signatures under paragraph  
1125 (a), the Department of Agency for Enterprise Information  
1126 Technology, in consultation with the governmental agency, giving  
1127 due consideration to security, may specify:

1128 1. The manner and format in which the electronic records  
1129 must be created, generated, sent, communicated, received, and  
1130 stored and the systems established for those purposes.

1131 2. If electronic records must be signed by electronic  
1132 means, the type of electronic signature required, the manner and  
1133 format in which the electronic signature must be affixed to the  
1134 electronic record, and the identity of, or criteria that must be  
1135 met by, any third party used by a person filing a document to  
1136 facilitate the process.

1137 3. Control processes and procedures as appropriate to  
1138 ensure adequate preservation, disposition, integrity, security,  
1139 confidentiality, and auditability of electronic records.

1140 4. Any other required attributes for electronic records  
1141 which are specified for corresponding nonelectronic records or  
1142 reasonably necessary under the circumstances.

1143 Section 22. During the 2011-2012 fiscal year, the



262522

1144 Department of Information Technology shall coordinate with all  
1145 state agencies to identify each state agency's total number of  
1146 positions and resources related to information technology.  
1147 Agencies must submit the information to the department by August  
1148 1, 2011. By September 1, 2011, the department shall submit a  
1149 plan to the Executive Office of the Governor, the President of  
1150 the Senate, and the Speaker of the House of Representatives for  
1151 transferring to the department all information technology  
1152 operations. Such information shall be included in each agency's  
1153 legislative budget request for the 2012-2013 fiscal year as a  
1154 transfer to the Department of Information Technology. This  
1155 section expires July 1, 2012.

1156       Section 23. The Department of Information Technology is  
1157 established effective July 1, 2012. On that date, the Agency for  
1158 Enterprise Information Technology is transferred from the  
1159 Executive Office of the Governor to the Department of  
1160 Information Technology by a type two transfer, as defined in s.  
1161 20.06(1), Florida Statutes.

1162       Section 24. This act shall take effect July 1, 2011.

1163  
1164 ===== T I T L E   A M E N D M E N T =====

1165 And the title is amended as follows:

1166       Delete everything before the enacting clause  
1167 and insert:

1168                               A bill to be entitled  
1169       An act relating to the Agency for Enterprise  
1170       Information Technology; transferring, renumbering, and  
1171       amending s. 14.204, F.S.; renaming the agency the  
1172       Department of Information Technology; establishing



262522

1173 divisions within the department; amending ss. 17.0315,  
1174 110.205, 215.322, and 216.235, F.S.; conforming  
1175 provisions to changes made by the act; repealing s.  
1176 282.0041, F.S., to delete reference to the agency;  
1177 amending s. 282.0055, F.S.; conforming provisions to  
1178 changes made by the act; amending s. 282.0056, F.S.;  
1179 specifying proposals that must be included in the  
1180 department's annual work plan; amending ss. 282.201,  
1181 282.203, 282.204, 282.205, 282.3055, 282.315, 282.318,  
1182 282.33, 282.34, 287.057, 445.011, 445.045, and 668.50,  
1183 F.S.; conforming provisions to changes made by the  
1184 act; requiring the department and state agencies to  
1185 identify all positions and resources related to  
1186 information technology by a certain date; requiring  
1187 the department to submit a plan to the Governor and  
1188 Legislature transferring all information technology  
1189 operations to the department; transferring the agency  
1190 from the Executive Office of the Governor to the  
1191 department by a type two transfer; providing an  
1192 effective date.



688164

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

1           **Senate Amendment to Amendment (262522) (with title**  
2 **amendment)**

3  
4           Delete lines 12 - 107

5 and insert:

6           ~~(1) The head of the agency shall be the Governor and~~  
7 ~~Cabinet.~~

8           ~~(2) The agency is a separate budget entity and is not~~  
9 ~~subject to control, supervision, or direction by the Executive~~  
10 ~~Office of the Governor, including, but not limited to,~~  
11 ~~purchasing, transactions involving real or personal property,~~  
12 ~~personnel, or budgetary matters.~~



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13            (1)~~(3)~~ The department ~~agency~~ shall have an executive  
14 director who is the state's Chief Technology Information ~~Information~~ Officer  
15 and who must, at a minimum:

16            (a) Have a degree from an accredited postsecondary  
17 institution in engineering, computer science, information  
18 science, or information systems;

19            (b) Have at least 7 years of executive-level experience in  
20 managing information technology organizations; and

21            (c) Be appointed by the Governor ~~and confirmed by the~~  
22 ~~Cabinet~~, subject to confirmation by the Senate, and serve at the  
23 pleasure of the Governor ~~and Cabinet~~.

24            (2) The department shall consist of the following  
25 divisions:

26            (a) The Division of Strategic Procurement, which includes  
27 the development of all enterprise information technology  
28 procurement and acquisition-management systems across state  
29 agencies, whether owned or contracted, and has the objective of  
30 achieving unified accountability.

31            (b) The Division of Policy Formation, Development, and  
32 Standards, which, by rule, sets the technical and architectural  
33 expectations for current and emerging technologies and  
34 establishes new human capital skill sets, competency  
35 expectations, and total compensation for all information  
36 technology professions within state agencies.

37            (c) The Division of Implementation, which is responsible  
38 for the execution, timing, and integration of specific  
39 technology components and business domain management and the  
40 retention of agency expertise in key legacy applications in  
41 nonstrategic management systems.



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42           ~~(3)-(4)~~ The department ~~agency~~ shall have the following  
43 duties and responsibilities:

44           (a) Develop strategies for the design, delivery, and  
45 management of the enterprise information technology services  
46 established in law.

47           (b) Monitor the delivery and management of the enterprise  
48 information technology services as established in law.

49           (c) Make recommendations to the agency head and the  
50 Legislature concerning other information technology services  
51 that should be designed, delivered, and managed as enterprise  
52 information technology services as defined in s. 282.0041.

53           (d) Plan and establish policies for managing proposed  
54 statutorily authorized enterprise information technology  
55 services, which includes:

56           1. Developing business cases that, when applicable, include  
57 the components identified in s. 287.0571;

58           2. Establishing and coordinating project-management teams;

59           3. Establishing formal risk-assessment and mitigation  
60 processes; and

61           4. Providing for independent monitoring of projects for  
62 recommended corrective actions.

63           (e) Beginning October 1, 2010, develop, publish, and  
64 biennially update a long-term strategic enterprise information  
65 technology plan that identifies and recommends strategies and  
66 opportunities to improve the delivery of cost-effective and  
67 efficient enterprise information technology services to be  
68 proposed for establishment pursuant to s. 282.0056.

69           (f) Perform duties related to the state data center system  
70 as provided in s. 282.201.



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71 (g) Coordinate acquisition planning and procurement  
72 negotiations for hardware and software products and services in  
73 order to improve the efficiency and reduce the cost of  
74 enterprise information technology services.

75 (h) Conduct procurements ~~In consultation with the Division~~  
76 ~~of Purchasing in the Department of Management Services,~~  
77 ~~coordinate procurement negotiations for information technology~~  
78 ~~products as defined in s. 282.0041 which will be used by~~  
79 ~~multiple agencies.~~

80 (i) In coordination with, and through the services of, the  
81 Division of Purchasing in the Department of Management Services,  
82 establish best practices for the procurement of information  
83 technology products as defined in s. 282.0041 in order to  
84 achieve savings for the state.

85 (j) Develop information technology standards for enterprise  
86 information technology services.

87 (k) Provide annually, by December 31, recommendations to  
88 the Legislature relating to techniques for consolidating the  
89 purchase of information technology commodities and services,  
90 which result in savings for the state, and for establishing a  
91 process to achieve savings through consolidated purchases.

92 ~~(4)-(5)~~ The Office of Information Security shall be created  
93 within the department ~~agency~~. The department ~~agency~~ shall  
94 designate a state Chief Information Security Officer who shall  
95 oversee the office and report directly to the executive  
96 director.

97 ~~(5)-(6)~~ The department ~~agency~~ shall operate in a manner that  
98 ensures the participation and representation of state agencies  
99 and the Agency Chief Information Officers Council established in



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100 s. 282.315.

101 ~~(6)-(7)~~ The department ~~agency~~ may adopt rules to carry out  
102 its statutory duties.

103  
104 Between lines 233 and 234

105 insert:

106 (d) Moving the provision of all state data needs to a cloud  
107 computing infrastructure by January 1, 2016.

108  
109 ===== T I T L E A M E N D M E N T =====

110 And the title is amended as follows:

111 Delete line 1172

112 and insert:

113 Department of Information Technology; requiring that  
114 the department director have a degree from an  
115 accredited postsecondary institution in certain  
116 fields, be appointed by the Governor, and serve at the  
117 pleasure of the Governor; establishing

**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 Governmental Oversight and Accountability Committee

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BILL: SB 102

INTRODUCER: Senator Ring

SUBJECT: Office of the Chief Technology Officer

DATE: March 25, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

The bill creates an Office of the Chief Technology Officer (“Office”) in the Department of Financial Services. The Office is comprised of three principal operating units, and charged with creating a multi-year operating plan on the transformation of state agency information technology procurement, policy, and execution practices. The bill specifies that the Chief Technology Officer, appointed by the Governor and the Cabinet, leads the Office.

The bill takes effect July 1, 2011.

This bill creates undesignated sections of the Florida Statutes.

**II. Present Situation:**

The operations and organizational configuration of information technology itself reflects the state’s traditional avoidance of concentration of authority in any one constitutional or statutory office. This dispersion complemented the separation of powers among the three governmental branches in its early history but as the reach of state government became greater over the years it also permitted the development of separately funded enclaves of technology operations within departments and their subordinate units.

Following the adjournment of the 2006 Regular Session of the Florida Legislature the then Senate Ways and Means Committee was commissioned to undertake a comprehensive review of information technology in state government. That commission resulted in the publication of a wide-ranging study that catalogued all of the state’s historical and structural efforts at

identifying, operating, and funding information technology.<sup>1</sup> The report discussed the statutory attempts at making programmatic sense of such an evolving technology and the contractual difficulties associated with failed attempts. The complex decision-making environments characteristic of the Florida state government federated executive system of management also played a role in attempting to achieve focus and accountability in this area.

Common themes soon presented themselves in both successful and unsuccessful ventures. Many projects were found to be off-task and off-budget, there was a poor understanding of operational expectations, or personnel and operational practices were insufficient for the proper and timely execution of responsibilities. In its 2007 report, the Senate Governmental Oversight and Productivity Committee identified several common attributes of state agency contractual procurements in which actual performance demonstrated a significant departure from expectations. All of those procurement underperformances reviewed had significant technology components and were found to be beset of one or more of the following conditions:

- A management-directed imperative to execute faster than the agency had capacity;
- Loss of knowledge capital through a strategic disinvestment in agency capacity or over reliance upon contract vendors;
- Decision-making based upon price rather than product or service effectiveness;
- Decision-making motivated by minimizing state investment and maximizing shared federal revenues;
- Claimed tangible savings that were speculative;
- Unwritten understandings accompanied by longer term financial liabilities;
- A rush to the procurement market with a poor understanding of expectations; and,
- Vendor systems that could not deliver the service or product on time, on-task, or on budget.

Limitations on the ability to execute system-wide changes are not confined to information technology. The Department of Management Services' human resources outsourcing initiative fell more than one year behind schedule as its contract vendor, Convergys Customer Management Group, had to contend with a difficult technology migration from the predecessor state personnel system to its successor one.<sup>2</sup> As a consequence there were missed or delayed employee payrolls, benefit coverage interruptions, incorrect benefit premium calculations, and ineffective implementation of electronic time and attendance reports. All of these resulted in increased management attention to these. Shortly after the department renegotiated the contract in late 2009, Convergys announced it was selling this line of business entirely to the English firm NorthgateArinso.

In a March 11, 2005, presentation to the National Association of State Comptrollers, the Department of Financial Services reported to the Nation's other state chief financial officers on Florida's experience to date with Convergys. The report<sup>3</sup> described the history of the procurement and the many performance expectations that the service provider had not executed well into the early implementation of its nine-year contract with the Department of Management Services.

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<sup>1</sup> *Enterprise Information Technology: Senate Review and Study*, Report No. 2007-140. Tallahassee, FL: January 2007.

<sup>2</sup> The proprietary state legacy system was **COPES** (**CO**operative **P**ersonnel and **E**mployment **S**ystem).

<sup>3</sup> Florida Department of Financial Services, *Outsourcing Human Resource Management*, undated.

The 2006 Legislature terminated funding for the State Technology Office in partial response to these cumulative difficulties. It funded an interim Enterprise Information Technology Services unit in the DMS pending a more significant restructuring of state agency relationships.

### **The Agency for Enterprise Information Technology**

The 2007 Legislature enacted CS/CS/SB 1974 to bring particular focus on information technology as an enterprise responsibility that links all of the state's separate business and jurisdictional entities. The head of the Agency for Enterprise Information Technology (agency or AEIT) is the Governor and Cabinet, and the agency is a separate budget entity and is not subject to control, supervision, or direction by the Executive Office of the Governor. The agency has an executive director who is the state's Chief Information Officer, who must have a degree from an accredited postsecondary institution, and at least 7 years of executive-level experience in managing information technology organizations. The Chief Information officer is appointed by the Governor and confirmed by the Cabinet, subject to confirmation by the Senate, and serves at the pleasure of the Governor and Cabinet.<sup>4</sup>

The agency has the following duties and responsibilities:<sup>5</sup>

- Develop strategies for the design, delivery, and management of the enterprise information technology services established in law.
- Monitor the delivery and management of the enterprise information technology services as established in law.
- Make recommendations to the agency head and the Legislature concerning other information technology services that should be designed, delivered, and managed as enterprise information technology services.
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services, which includes:
  - Developing business cases that, when applicable, include the components required in business cases to outsource;<sup>6</sup>
  - Establishing and coordinating project-management teams;
  - Establishing formal risk-assessment and mitigation processes; and
  - Providing for independent monitoring of projects for recommended corrective actions.
- Develop, publish, and biennially update a long-term strategic enterprise information technology plan that identifies and recommends strategies and opportunities to improve the delivery of cost-effective and efficient enterprise information technology services to be proposed for establishment.
- Perform duties related to the state data center system as provided in s. 282.201, F.S.
- Coordinate acquisition planning and procurement negotiations for hardware and software products and services.
- In consultation with the Division of Purchasing in the Department of Management Services (DMS), coordinate procurement negotiations for information technology products as which will be used by multiple agencies.
- In coordination with DMS, establish best practices for the procurement of information technology products.

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<sup>4</sup> Section 14.204(1), (2), and (3), F.S.

<sup>5</sup> Section 14.204(4), F.S.

<sup>6</sup> The requirements for business cases to outsource are specified in s. 287.0571, F.S.

- Develop information technology standards for enterprise information technology services.
- Provide yearly recommendations to the Legislature relating to techniques for consolidating the purchase of information technology commodities and services, and for establishing a process to achieve savings through consolidated purchases.

The Office of Information Security is created within the agency, which designates a state Chief Information Security Officer to oversee the office and report directly to the executive director. The agency must operate in a manner that ensures the participation and representation of state agencies and the Agency Chief Information Officers Council, and the agency may adopt rules to carry out its statutory duties.<sup>7</sup>

Pursuant to legislative direction, AEIT organizes the required consolidation of agency data centers, and is working on a solicitation, business case analysis, and implementation plan for the provision of an enterprise-wide email system.

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

The bill creates within the Department of Financial Services the Office of the Chief Technology Officer. It is comprised of three divisions: Strategic Procurement; Policy Formulation, Development and Standards; and Implementation.

The Office is charged with developing a multi-year execution plan for state agency information technology with specific tasks and benchmarks, as follows:

- Consolidation of state agency data centers by the year 2014;
- By the end of Calendar Year 2011, initiating a revised financial management infrastructure encompassing the legislative appropriations system; cash management; accounting; purchasing; and human resources subsystems;
- By the start of the year 2012, a reconfiguration of the roles and responsibilities associated with strategic information technology practices affecting the Department of Financial Services, the Agency for Enterprise Information Technology, and the Department of Management Services; and,
- By a date to be determined, the creating of state agency-wide customer relationship management systems embracing all licensure, certification, and regulatory inspections systems now managed by separate state agencies.

The effective date of the bill is July 1, 2011.

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

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

None.

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<sup>7</sup> Section 14.204(5),(6), and (7), F.S.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The 2007 Legislature created the Agency for Enterprise Information Technology and gave it a systemic mission in state information technology. The Office embraces this mission implicitly but also extends the expectations into more tactical and operational responsibilities not now assigned to the AEIT. Attempting to gauge the appropriations impact of this bill is imprecise at present as it both supplements and supplants the role of AEIT. The funding considerations associated with this bill will also be affected by the 2011 Legislature's decisions on addressing management of state financial management systems, as in SB 1738.

**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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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 18 - 59  
and insert:

Section 1. Subsections (1), (2) and (3) of section 215.44,  
Florida Statutes, are amended to read:

215.44 Board of Administration; powers and duties in  
relation to investment of trust funds.—

(1) Except when otherwise specifically provided by the  
State Constitution and subject to any limitations of the trust  
agreement relating to a trust fund, the Board of Administration,  
sometimes referred to in this chapter as "board" or "Trustees of



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13 the State Board of Administration," composed of the Governor as  
14 chair, the Chief Financial Officer, and the Attorney General,  
15 shall invest all the funds in the System Trust Fund, as defined  
16 in s. 121.021(36), and all other funds specifically required by  
17 law to be invested by the board pursuant to ss. 215.44-215.53 to  
18 the fullest extent that is consistent with the cash  
19 requirements, trust agreement, and investment objectives of the  
20 fund. Notwithstanding any other law to the contrary, the State  
21 Board of Administration may invest any funds of any state  
22 agency, any state university or college, any unit of local  
23 government, or any direct-support organization thereof pursuant  
24 to the terms of a trust agreement with the head of the state  
25 agency or the governing body of the state university or college,  
26 unit of local government, or direct-support organization  
27 thereof, ~~or pursuant to the enrollment requirements stated in s.~~  
28 ~~218.407,~~ and may invest such funds in the Local Government  
29 Surplus Funds Trust Fund created by s. 218.405, without a trust  
30 agreement, upon completion of enrollment materials provided by  
31 the board. The board shall approve the undertaking of  
32 investments subject to a trust agreement before execution of  
33 such trust agreement by the State Board of Administration. The  
34 funds and the earnings therefrom are exempt from the service  
35 charge imposed by s. 215.20. As used in this subsection, the  
36 term "state agency" has the same meaning as that provided in s.  
37 216.011, and the terms "governing body" and "unit of local  
38 government" have the same meaning as that provided in s.  
39 218.403.

40 (2) (a) The board shall have the power to make purchases,  
41 sales, exchanges, investments, and reinvestments for and on



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42 behalf of the funds referred to in subsection (1), and it shall  
43 be the duty of the board to see that moneys invested under the  
44 provisions of ss. 215.44-215.53 are at all times handled in the  
45 best interests of the state.

46 (b) In exercising investment authority pursuant to s.  
47 215.47, the board may retain investment advisers or managers, or  
48 both, external to in-house staff, to assist the board in  
49 carrying out the power specified in paragraph (a).

50 (c) The board shall create an audit committee to assist the  
51 board in fulfilling its oversight responsibilities. The  
52 committee shall consist of three members appointed by the board.  
53 Members shall be appointed for 4-year terms. A vacancy shall be  
54 filled for the remainder of the unexpired term. The committee  
55 shall annually elect a chair and vice chair from its membership.  
56 A member may not be elected to consecutive terms as chair or  
57 vice chair. Persons appointed to the audit committee must have  
58 relevant knowledge and expertise as determined by the board. The  
59 audit committee shall serve as an independent and objective  
60 party to monitor processes for financial reporting, internal  
61 controls and risk assessment, audit processes, and compliance  
62 with laws, rules, and regulations. The audit committee shall  
63 direct the efforts of the board's independent external auditors  
64 and the board's internal audit staff. The committee shall  
65 periodically, but at least ~~not less than~~ quarterly, report to  
66 the board and the executive director of the board.

67 (d) The board shall produce a set of financial statements  
68 for the Florida Retirement System on an annual basis, which  
69 shall be reported to the Legislature and audited by a commercial  
70 independent third-party audit firm under the direction of the



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71 audit committee.

72 (e) Pursuant to s. 110.205, the board shall establish and  
73 maintain the salaries and benefits of its officers and employees  
74 in a manner consistent with the board's fiduciary responsibility  
75 to recruit and retain highly qualified and effective key  
76 personnel. At least every 5 years, the Investment Advisory  
77 Council shall cause a total compensation study to be conducted  
78 by a private consulting firm having expertise in salary and  
79 benefits administration of institutional investment entities.  
80 The study shall be designed to determine competitive salary  
81 ranges, other compensation, and benefits for positions within  
82 the board based on comparable public-sector peer investment  
83 entities. The council shall present the total compensation  
84 study, along with its recommendations, to the board. The  
85 recommendations are subject to review and ratification or  
86 reversal by the board. The board may delegate to the executive  
87 director the authority and duty to set staff salaries within the  
88 ranges approved by the board.

89 (f) ~~(e)~~ The board shall meet at least quarterly and shall  
90 receive reports from the audit committee, the investment  
91 advisory committee, ~~the inspector general, the general counsel,~~  
92 the executive director, and such other persons or entities as  
93 the board may require about the financial status, operations,  
94 and investment activities of the board.

95 (3) Notwithstanding any law to the contrary, all  
96 investments made by the State Board of Administration pursuant  
97 to ss. 215.44-215.53 shall be subject to the restrictions and  
98 limitations contained in s. 215.47, except that investments made  
99 by the board under a trust agreement pursuant to subsection (1)



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100 are subject only to the restrictions and limitations contained  
101 in that trust agreement.

102 Section 2. Section 215.441, Florida Statutes, is amended to  
103 read:

104 215.441 Board of Administration; appointment of executive  
105 director.—The appointment of the executive director of the State  
106 Board of Administration is shall be subject to the approval by a  
107 majority vote of the Board of Trustees of the State Board of  
108 Administration, and the Governor must vote on the prevailing  
109 side. Such appointment must be reaffirmed in the same manner by  
110 the board of trustees on an annual basis.

111 (1) Before appointing the executive director, the board  
112 shall appoint a search committee to develop minimum position  
113 requirements, review applications, and make recommendations to  
114 the board with regard to qualified applicants for the position.  
115 At a minimum, the search committee shall consist of at least  
116 three members of the Investment Advisory Council.

117 (2) The executive director shall, at a minimum, possess  
118 substantial experience, knowledge, and expertise in the  
119 oversight of investment portfolios and must meet any other  
120 requirements determined by the board to be necessary to the  
121 overall management and investment of funds.

122 (3) The compensation for the executive director shall be  
123 determined by the board, consistent with s. 215.44(2)(d).

124 Section 3. Subsection (1) of section 215.442, Florida  
125 Statutes, is amended to read:

126 215.442 Executive director; reporting requirements; public  
127 meeting.—

128 (1) Beginning October 2007 and quarterly thereafter, the



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129 executive director shall present to the Board of Trustees and  
130 the Investment Advisory Council of the State Board of  
131 Administration a quarterly report to include the following:

132 (a) The name of each equity in which the State Board of  
133 Administration has invested for the quarter.

134 (b) The industry category of each equity.

135 Section 4. Section 215.444, Florida Statutes, is amended to  
136 read:

137 215.444 Investment Advisory Council.—

138 (1) ~~There is created~~ A five-member ~~six-member~~ Investment  
139 Advisory Council is created to review the investments made by  
140 the staff of the Board of Administration and to make  
141 recommendations to the board regarding investment policy,  
142 strategy, and procedures.

143 (2) Beginning February 1, 2011, the membership of the  
144 council shall be expanded to nine members. Beginning July 1,  
145 2011, board membership shall be reduced by not refilling board  
146 positions as the terms of the members expire until board  
147 membership consists of five members. Thereafter, three of those  
148 members shall be appointed by the Governor, one member shall be  
149 appointed by the Chief Financial Officer, and one member shall  
150 be appointed by the Attorney General. Members shall be appointed  
151 for 4-year terms. A vacancy shall be filled for the remainder of  
152 the unexpired term. The council shall annually elect a chair and  
153 a vice chair from its membership. A member may not be elected to  
154 consecutive terms as chair or vice chair. ~~The council shall meet~~  
155 ~~with staff of the board at least once each quarter and shall~~  
156 ~~provide a quarterly report directly to the Board of Trustees of~~  
157 ~~the State Board of Administration at a meeting of the board.~~



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158           ~~(2) The members of the council shall be appointed by the~~  
159 ~~board as a resource to the Board of Trustees of the State Board~~  
160 ~~of Administration and shall be subject to confirmation by the~~  
161 ~~Senate.~~

162           (3) In order to be appointed, an individual must ~~These~~  
163 ~~individuals shall~~ possess special knowledge, experience, and  
164 familiarity with portfolio management, institutional  
165 investments, and fiduciary responsibilities, have been in a  
166 position that oversaw \$1 billion in assets, and may have had  
167 extensive experience in managing or overseeing investment  
168 portfolios or conducting research in any two or more of the  
169 following areas: domestic equities, international equities,  
170 fixed-income securities, cash management, marketable and  
171 nonmarketable alternative investments, or real estate. ~~Members~~  
172 ~~shall be appointed for 4-year terms. A vacancy shall be filled~~  
173 ~~for the remainder of the unexpired term. The council shall~~  
174 ~~annually elect a chair and a vice chair from its membership. A~~  
175 ~~member may not be elected to consecutive terms as chair or vice~~  
176 ~~chair.~~

177           (4)~~(3)~~ The council members must undergo regular fiduciary  
178 training as required by the board and must complete an annual  
179 conflict disclosure statement. In carrying out their duties,  
180 council members must make recommendations consistent with the  
181 fiduciary standards applicable to the board.

182           (5) In addition to the duties in subsection (1), the  
183 council shall approve the investment policy statements of the  
184 board, participate in the selection process regarding an  
185 executive director, obtain periodic compensation studies and  
186 provide recommendations thereon, meet quarterly to review the



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187 investment performance of funds, and perform any other duties as  
188 determined by the board. The council shall meet with board staff  
189 at least once each quarter and provide a quarterly report  
190 directly to the Board of Administration at a meeting of the  
191 board.

192 (6)~~(4)~~ The council may create subcommittees as necessary to  
193 carry out its duties and responsibilities and may direct the  
194 executive director to enter into contracts with independent  
195 compensation consultants.

196 (7) In carrying out the provisions of this subsection, a  
197 member of the council is an officer, employee, or agent of the  
198 state for purposes of the state's waiver of sovereign immunity  
199 as provided in s. 768.28.

200  
201 ===== T I T L E A M E N D M E N T =====

202 And the title is amended as follows:

203 Delete lines 3 - 10

204 and insert:

205 amending s. 215.44, F.S.; authorizing the board to  
206 invest the assets of a governmental entity in the  
207 Local Government Surplus Funds Trust Fund without a  
208 trust agreement with that governmental entity;  
209 requiring the board to establish and maintain the  
210 salaries of its officers and employees in a manner  
211 consistent with its fiduciary duties; requiring that  
212 the Investment Advisory Council initiate a study at  
213 specified intervals to evaluate compensation;  
214 requiring that the council present the results of such  
215 study to the board; authorizing the board to delegate



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216 certain authority and duties relating to salaries to  
217 the executive director; revising the entities that  
218 submit reports to the board; providing that certain  
219 investments made by the board under a trust agreement  
220 are subject only to the restrictions and limitations  
221 contained in the trust agreement; amending s. 215.441,  
222 F.S.; providing for the creation, operation, and  
223 membership of a search committee for the purpose of  
224 selecting the executive director; providing  
225 requirements for the appointment as executive  
226 director; providing for the determination of the  
227 executive director's compensation; amending s.  
228 215.442, F.S.; requiring that the executive director  
229 present certain information quarterly to the  
230 Investment Advisory Council; amending s. 215.444,  
231 F.S.; reducing the number of council members and  
232 providing for the appointment of such members;  
233 expanding prerequisites for membership on the council;  
234 providing additional duties of the council;  
235 authorizing the council to create subcommittees and  
236 direct the executive director to enter into certain  
237 contracts; providing that a council member is an  
238 officer, employee, or agent of the state for the  
239 purpose of sovereign immunity; amending s. 215.4755,  
240 F.S.; correcting



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 18 - 59  
and insert:

Section 1. Subsections (1), (2), and (3) of section 215.44,  
Florida Statutes, are amended to read:

215.44 Board of Administration; powers and duties in  
relation to investment of trust funds.—

(1) Except when otherwise specifically provided by the  
State Constitution and subject to any limitations of the trust  
agreement relating to a trust fund, the Board of Administration,  
sometimes referred to in this chapter as “board” or “Trustees of



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13 the State Board of Administration," composed of the Governor as  
14 chair, the Chief Financial Officer, and the Attorney General,  
15 shall invest all the funds in the System Trust Fund, as defined  
16 in s. 121.021(36), and all other funds specifically required by  
17 law to be invested by the board pursuant to ss. 215.44-215.53 to  
18 the fullest extent that is consistent with the cash  
19 requirements, trust agreement, and investment objectives of the  
20 fund. Notwithstanding any other law to the contrary, the State  
21 Board of Administration may invest any funds of any state  
22 agency, any state university or college, any unit of local  
23 government, or any direct-support organization thereof pursuant  
24 to the terms of a trust agreement with the head of the state  
25 agency or the governing body of the state university or college,  
26 unit of local government, or direct-support organization  
27 thereof, ~~or pursuant to the enrollment requirements stated in s.~~  
28 ~~218.407,~~ and may invest such funds in the Local Government  
29 Surplus Funds Trust Fund created by s. 218.405, without a trust  
30 agreement, upon completion of enrollment materials provided by  
31 the board. The board shall approve the undertaking of  
32 investments subject to a trust agreement before execution of  
33 such trust agreement by the State Board of Administration. The  
34 funds and the earnings therefrom are exempt from the service  
35 charge imposed by s. 215.20. As used in this subsection, the  
36 term "state agency" has the same meaning as that provided in s.  
37 216.011, and the terms "governing body" and "unit of local  
38 government" have the same meaning as that provided in s.  
39 218.403.

40 (2) (a) The board shall have the power to make purchases,  
41 sales, exchanges, investments, and reinvestments for and on



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42 behalf of the funds referred to in subsection (1), and it shall  
43 be the duty of the board to see that moneys invested under the  
44 provisions of ss. 215.44-215.53 are at all times handled in the  
45 best interests of the state.

46 (b) In exercising investment authority pursuant to s.  
47 215.47, the board may retain investment advisers or managers, or  
48 both, external to in-house staff, to assist the board in  
49 carrying out the power specified in paragraph (a).

50 (c) The board shall create an audit committee to assist the  
51 board in fulfilling its oversight responsibilities. The  
52 committee shall consist of three members appointed by the board.  
53 Members shall be appointed for 4-year terms. A vacancy shall be  
54 filled for the remainder of the unexpired term. The committee  
55 shall annually elect a chair and vice chair from its membership.  
56 A member may not be elected to consecutive terms as chair or  
57 vice chair. Persons appointed to the audit committee must have  
58 relevant knowledge and expertise as determined by the board. The  
59 audit committee shall serve as an independent and objective  
60 party to monitor processes for financial reporting, internal  
61 controls and risk assessment, audit processes, and compliance  
62 with laws, rules, and regulations. The audit committee shall  
63 direct the efforts of the board's independent external auditors  
64 and the board's internal audit staff. The committee shall  
65 periodically, but at least ~~not less than~~ quarterly, report to  
66 the board and the executive director of the board.

67 (d) The board shall produce a set of financial statements  
68 for the Florida Retirement System on an annual basis, which  
69 shall be reported to the Legislature and audited by a commercial  
70 independent third-party audit firm under the direction of the



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71 audit committee.

72 (e) Pursuant to s. 110.205, the board shall establish and  
73 maintain the salaries and benefits of its officers and employees  
74 in a manner consistent with the board's fiduciary responsibility  
75 to recruit and retain highly qualified and effective key  
76 personnel. At least every 5 years, the Investment Committee  
77 shall cause a total compensation study to be conducted by a  
78 private consulting firm having expertise in salary and benefits  
79 administration of institutional investment entities. The study  
80 shall be designed to determine competitive salary ranges, other  
81 compensation, and benefits for positions within the board based  
82 on comparable public-sector peer investment entities. The  
83 council shall present the total compensation study, along with  
84 its recommendations, to the board. The recommendations are  
85 subject to review and ratification or reversal by the board. The  
86 board may delegate to the executive director the authority and  
87 duty to set staff salaries within the ranges approved by the  
88 board.

89 (f) ~~(e)~~ The board shall meet at least quarterly and shall  
90 receive reports from the audit committee, the investment  
91 advisory committee, ~~the inspector general, the general counsel,~~  
92 the executive director, and such other persons or entities as  
93 the board may require about the financial status, operations,  
94 and investment activities of the board.

95 (3) Notwithstanding any law to the contrary, all  
96 investments made by the State Board of Administration pursuant  
97 to ss. 215.44-215.53 shall be subject to the restrictions and  
98 limitations contained in s. 215.47, except that investments made  
99 by the board under a trust agreement pursuant to subsection (1)



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100 are subject only to the restrictions and limitations contained  
101 in that trust agreement.

102 Section 2. Section 215.441, Florida Statutes, is amended to  
103 read:

104 215.441 Board of Administration; appointment of executive  
105 director.—The appointment of the executive director of the State  
106 Board of Administration is shall be subject to the approval by a  
107 majority vote of the Board of Trustees of the State Board of  
108 Administration, and the Governor must vote on the prevailing  
109 side. Such appointment must be reaffirmed in the same manner by  
110 the board of trustees on an annual basis.

111 (1) Before appointing the executive director, the board  
112 shall appoint a search committee to develop minimum position  
113 requirements, review applications, and make recommendations to  
114 the board with regard to qualified applicants for the position.  
115 At a minimum, the search committee shall consist of at least  
116 three members of the Investment Committee.

117 (2) The executive director shall, at a minimum, possess  
118 substantial experience, knowledge, and expertise in the  
119 oversight of investment portfolios and must meet any other  
120 requirements determined by the board to be necessary to the  
121 overall management and investment of funds.

122 (3) The compensation for the executive director shall be  
123 determined by the board, consistent with s. 215.44(2)(d).

124 Section 3. Subsection (1) of section 215.442, Florida  
125 Statutes, is amended to read:

126 215.442 Executive director; reporting requirements; public  
127 meeting.—

128 (1) Beginning October 2007 and quarterly thereafter, the



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129 executive director shall present to the Board of Trustees and  
130 the Investment Committee of the State Board of Administration a  
131 quarterly report to include the following:

132 (a) The name of each equity in which the State Board of  
133 Administration has invested for the quarter.

134 (b) The industry category of each equity.

135 Section 4. Effective January 1, 2012, section 215.444,  
136 Florida Statutes, is amended to read:

137 (Substantial rewording of section. See  
138 s. 215.444, F.S. for present text.)

139 215.444 Investment Committee.-

140 (1) A five-member Investment Committee is created to review  
141 the investments made by the staff of the Board of  
142 Administration.

143 (2) Three of those members shall be appointed by the  
144 Governor, one member shall be appointed by the Chief Financial  
145 Officer, and one member shall be appointed by the Attorney  
146 General. Members shall be appointed for 4-year terms. A vacancy  
147 shall be filled for the remainder of the unexpired term. The  
148 committee shall annually elect a chair and a vice chair from its  
149 membership. A member may not be elected to consecutive terms as  
150 chair or vice chair.

151 (3) In order to be appointed, an individual must possess  
152 special knowledge, experience, and familiarity with portfolio  
153 management, institutional investments, and fiduciary  
154 responsibilities, have been in a position that oversaw \$1  
155 billion in assets, and may have had extensive experience in  
156 managing or overseeing investment portfolios or conducting  
157 research in any two or more of the following areas: domestic



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158 equities, international equities, fixed-income securities, cash  
159 management, marketable and nonmarketable alternative  
160 investments, or real estate.

161 (4) The committee members must undergo regular fiduciary  
162 training as required by the board and must complete an annual  
163 conflict disclosure statement. In carrying out their duties,  
164 committee members are deemed named fiduciaries and must make  
165 recommendations consistent with the fiduciary standards  
166 applicable to the board.

167 (5) The committee shall approve the investment policy  
168 statements of the board as provided in ss. 215.475,  
169 121.4501(14), 215.5601(4)(a), and 218.409(2)(d), participate in  
170 the selection process regarding an executive director, obtain  
171 periodic compensation studies and provide recommendations  
172 thereon, meet at least quarterly to review the investment  
173 performance of funds, and perform any other duties as determined  
174 by the board. Decisions of the committee may be overturned only  
175 by a unanimous vote of the Board of Administration. The  
176 committee shall meet with board staff at least once each quarter  
177 and provide a quarterly report directly to the Board of  
178 Administration at a meeting of the board.

179 (6) The committee may create subcommittees as necessary to  
180 carry out its duties and responsibilities and may direct the  
181 executive director to enter into contracts with independent  
182 compensation consultants.

183 (7) In carrying out the provisions of this section, a  
184 member of the committee is an officer, employee, or agent of the  
185 state for purposes of the state's waiver of sovereign immunity  
186 as provided in s. 768.28.



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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

amending s. 215.44, F.S.; authorizing the board to invest the assets of a governmental entity in the Local Government Surplus Funds Trust Fund without a trust agreement with that governmental entity; requiring the board to establish and maintain the salaries of its officers and employees in a manner consistent with its fiduciary duties; requiring that the Investment Advisory Council initiate a study at specified intervals to evaluate compensation; requiring that the council present the results of such study to the board; authorizing the board to delegate certain authority and duties relating to salaries to the executive director; revising the entities that submit reports to the board; providing that certain investments made by the board under a trust agreement are subject only to the restrictions and limitations contained in the trust agreement; amending s. 215.441, F.S.; providing for the creation, operation, and membership of a search committee for the purpose of selecting the executive director; providing requirements for the appointment as executive director; providing for the determination of the executive director's compensation; amending s. 215.442, F.S.; requiring that the executive director



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216 present certain information quarterly to the  
217 Investment Committee; amending s. 215.444, F.S.;  
218 deleting provisions relating to the Investment  
219 Advisory Council and creating the five-member  
220 Investment Committee to assume the duties of the  
221 former council; providing for terms of members and the  
222 appointment of such members; providing prerequisites  
223 for membership on the committee; providing duties of  
224 the committee; authorizing the committee to create  
225 subcommittees and direct the executive director to  
226 enter into certain contracts; providing that a  
227 committee member is an officer, employee, or agent of  
228 the state for the purpose of sovereign immunity;  
229 amending s. 215.4755, F.S.; correcting

**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 Governmental Oversight and Accountability Committee

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BILL: SB 1182

INTRODUCER: Senator Ring

SUBJECT: State Board of Administration

DATE: March 19, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

The bill amends s. 215.44(1), F.S., to specify that the State Board of Administration does not need a trust agreement with a governmental entity to invest their assets in the Local Government Surplus Funds Trust Fund; these entities will instead be required to complete enrollment materials provided by the board. The bill clarifies that any investments done through a trust agreement are not restricted by the list of authorized investments. The bill also corrects cross references, and changes terminology used in certification and disclosure provisions.

This bill amends the following sections of the Florida Statutes: 215.44 and 215.4755.

**II. Present Situation:**

**The State Board of Administration**

The State Board of Administration (SBA) is comprised of the Governor, Chief Financial Officer and Attorney General.<sup>1</sup> The SBA manages thirty-six separate statutory investment portfolios, the largest one of which is the multi-employer Florida Retirement System. The SBA must invest and reinvest available funds of the System Trust Fund in accordance with the specified statutory provisions.<sup>2</sup> The System Trust Fund is the trust fund established by statute in the State Treasury for the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may become entitled.<sup>3</sup> Other trust

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<sup>1</sup> Section 16, art. IX, Constitution of 1885, and continued by s. 9, art. IX, State Constitution, as revised in 1968 and subsequently amended.

<sup>2</sup> Section 121.151, F.S.

<sup>3</sup> Section 121.021(36), F.S.

funds may be established in the State Treasury to administer the System Trust Fund. In making investments for the System Trust Fund the board may not make any investments not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement.<sup>4</sup>

The SBA also manages investments on behalf of the Hurricane Catastrophe Fund, the Florida Lottery, the Pre-Paid College Fund, its own separately constituted Division of Bond Finance, and pooled money market funds for local governments (Florida Prime), among others. Assets under management as of November 30, 2010, totaled \$145.6 billion.

The Trustees and agency investment personnel are named fiduciaries for the management of funds under their control. As such, they must adhere to the duties of prudence, loyalty, sole and exclusive benefit in the discharge of their responsibilities. The SBA also houses a statutory Investment Advisory Council whose purpose is to provide the staff and Trustees with non-fiduciary advice on trends and conditions in the institutional investment marketplace. The SBA participates with its peer plans in a number of institutional investor organizations on matters affecting national and international finance.

Section 215.47, F.S., specifies the types of investments authorized for use by the SBA. Section 215.477, specifying the certification and disclosure requirements for investment advisors and managers, was created by House Bill 1307 in the 2010 Regular Session.<sup>5</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 215.44(1), F.S., to specify that the State Board of Administration does not need a trust agreement with a governmental entity to invest their assets in the Local Government Surplus Funds Trust Fund created in s. 218.405, F.S. These entities will be required to complete enrollment materials provided by the board, which simplifies the investment process. The bill also amends subsection (3) to clarify that any investments done through a trust agreement are not restricted by the list provided in s. 215.47, F.S.

**Section 2** amends s. 215.4755, F.S., to correct cross-references, replace the word “individual” with “employee at a broker-dealer firm,” and deletes “perceived” from the types of conflicts of interest that must be disclosed, leaving “actual or potential” conflicts.

The bill takes effect July 1, 2011.

### IV. Constitutional Issues:

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

None.

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<sup>4</sup> Section 215.475(1), F.S.

<sup>5</sup> Section 11 of Chapter 2010-180, L.O.F.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. 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.

**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 Governmental Oversight and Accountability Committee

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BILL: SB 2090

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Open Government Sunset Review/Submission of Competitive Solicitations

DATE: April 1, 2011 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts		<b>Pre-Meeting</b>
2.				
3.				
4.				
5.				
6.				

**I. Summary:**

This bill is the result of Open Government Sunset Reviews by the Governmental Oversight and Accountability Committee of public-records and -meetings exemptions pertaining to competitive procurement solicitations.

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public-records and –meetings exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN are exempt from public-records requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is conducted pursuant to an ITN is exempt from public-meetings requirements. A complete recording must be made of the exempt meeting. The recording is exempt from public-records requirements until a time certain.

This bill reenacts the exemptions, which will repeal on October 2, 2011, if this bill does not become law.

This bill expands the public-records exemption by extending the exemption for sealed bids and proposals from 10 days to 30 days. This change also makes the timeframes consistent.

The bill expands the public-meetings exemption to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive

solicitation. It is further expanded to include any portion of a team meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

The bill extends the repeal date for the exemptions to October 2, 2016, and provides a public necessity statement as required by the State Constitution.

Because this bill expands existing exemptions, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends the following sections of the Florida Statutes: 119.071(1)(b)1.b.; 119.071(1)(b)2.; and 286.0113(2).

## **II. Present Situation:**

### **Public Records and Meetings**

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 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.

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

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

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>

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>

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No

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<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* fn. 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).

<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).

resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.<sup>10</sup>

Article I, section 24 of the Florida Constitution, chapter 119, F.S., and chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under article I, Section 24(a) of the Florida Constitution, “any public body, officer, or employee of the state, or persons acting on their behalf” is subject to the public records law. Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, is subject to the open meetings law. Under chapter 119, F.S., any agency<sup>11</sup> is subject to the public records laws. Under s. 286.011, F.S., all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws.

Only the Legislature is authorized to create exemptions to open government requirements.<sup>12</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>13</sup> A bill enacting an exemption<sup>14</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>15</sup>

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

The Open Government Sunset Review Act (Act)<sup>16</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>17</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:

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<sup>10</sup> Section 286.011, F.S.

<sup>11</sup> “Agency” is defined as “any state, county, district, authority, or municipal officer, department, division, 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.” Section 119.011(2), F.S.

<sup>12</sup> *Supra* fn. 1.

<sup>13</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>14</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>15</sup> *Supra* fn. 1.

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

- 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>18</sup>

The Act also requires the Legislature to consider the following:

- 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>19</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.

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

<sup>19</sup> *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

## Agency Procurement

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law:<sup>20</sup>

1. Invitation to bid (ITB): An agency must use an ITB when it is capable of specifically defining the scope of work for which a contractual service is required or capable of establishing the precise specifications defining the commodities sought.<sup>21</sup> The contract must be awarded to the responsible<sup>22</sup> and responsive vendor<sup>23</sup> that submits the lowest responsive bid.<sup>24 25</sup>
2. Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to specifically define the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.<sup>26</sup> Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award shall be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.<sup>27</sup>
3. Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.<sup>28 29</sup> After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or more vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.<sup>30</sup>

Legislative intent expressed in Chapter 287, Florida Statutes, establishes several findings related to the competitive procurement process, including:<sup>31</sup>

- Fair and open competition is a basic tenet of public procurement.
- Open competition reduces the appearance and opportunity for favoritism.

<sup>20</sup> Section 287.057, F.S.

<sup>21</sup> Section 287.012(16), F.S.

<sup>22</sup> The term "responsible vendor" means, ". . . a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.

<sup>23</sup> "Responsive vendor" means, ". . . a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

<sup>24</sup> Section 287.057(1), F.S.

<sup>25</sup> "Responsive bid," "responsive proposal," or "responsive reply" means, ". . . a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.

<sup>26</sup> Sections 287.012(22) and 287.057(2), F.S.

<sup>27</sup> Section 287.057(2), F.S.

<sup>28</sup> Sections 287.012(17) and 287.057(3), F.S.

<sup>29</sup> "Best value" means, ". . . the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.

<sup>30</sup> Section 287.057(3), F.S.

<sup>31</sup> Section 287.001, F.S.

- It is essential that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained.

### **Exemptions Under Review**

Current law provides a general public-records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bids or proposals are exempt from public-records requirements until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.<sup>32</sup>

In 2006, the Legislature expanded the public-records exemption to provide that, if an agency rejects all bids or proposals submitted in response to an ITB or RFP, and concurrently provides notice of its intent to reissue the ITB or RFP, then the rejected bids or proposals remain exempt from public-records requirements until the agency:

- Provides notice of a decision of intended decision concerning the reissued ITB or RFP; or
- Withdraws the reissued ITB or RFP.<sup>33</sup>

The Legislature further expanded the public-records exemption to provide that a competitive sealed reply in response to an ITN is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier.<sup>34</sup> The rejected sealed replies remain exempt from public-records requirements if the agency:

- Rejects all competitive sealed replies;
- Concurrently provides notice of its intent to reissue the ITN; and,
- Reissues the ITN within 90 days after the notice of intent to reissue.

The exemption expires when the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.<sup>35</sup>

Pursuant to the Open Government Sunset Review Act, the public-records exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>36</sup>

Current law also provides a general public-meetings exemption for those meetings at which a negotiation with a vendor is conducted pursuant to an ITN.<sup>37</sup> A complete recording must be made of the exempt meeting. In addition, the recording is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier. If the agency rejects all sealed replies, the recording remains exempt until the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A

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<sup>32</sup> Section 119.071(1)(b)1.a., F.S.

<sup>33</sup> Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)1.b., F.S.

<sup>34</sup> Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)2.a., F.S.

<sup>35</sup> Section 119.071(1)(b)2.b., F.S.

<sup>36</sup> Sections 119.071(1)(b)1.b. and 2.c., F.S.

<sup>37</sup> Chapter 2006-284, L.O.F., codified as s. 286.0113(2)(a), F.S.

recording is not exempt from public-records requirements for longer than 12 months after the initial agency notice rejecting all replies.<sup>38</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>39</sup>

### **Governmental Oversight and Accountability Committee's Open Government Sunset Reviews**

As part of the Open Government Sunset Review process, the professional staff of the Governmental Oversight and Accountability Committee held meetings with affected persons tasked with applying the public-records and public-meetings exemption.

Based upon its review of these public-records and –meetings exemptions under the Open Government Sunset Review Act, the professional staff of the Governmental Oversight and Accountability Committee recommend that the Legislature retain the exemptions established in ss. 119.071(1)(b)1.b., 119.071(1)(b)2., and 286.0113(2), F.S., that relate to competitive solicitations. Senate professional staff conclude that the exemptions are necessary to protect the confidential business information of proprietors responding to competitive solicitations from governmental entities.

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

The bill reenacts, expands, and reorganizes the public-records exemptions for competitive solicitations.

First, the bill removes references to ITBs, RFPs, and ITNs, by creating a definition for “competitive solicitation.” “Competitive solicitation” is defined to mean “the process of requesting and receiving sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” By creating a definition for “competitive solicitation” and removing references to chapter 287, F.S., local governments are able to use the public-records exemption associated with ITNs.

Current law protects sealed bids or proposals until a decision or intended decision is made or within 10 days after bid- or proposal-opening. In addition, sealed replies are protected until a decision or intended decision is made or until 20 days after the final competitive sealed reply is opened. Based upon discussions with impacted parties, the bill creates consistency by providing that all sealed bids, proposals, or replies are exempt until notice of an intended decision or until 30 days after opening the bids, proposals, or replies. Also, the bill provides that all bids, proposals, or replies may not remain exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Current law only applies to responses to an ITN.

The bill also reenacts, expands, and reorganizes the public-meetings exemption for competitive solicitations.

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<sup>38</sup> Section 286.0113(2)(b), F.S.

<sup>39</sup> Section 286.0113(2)(c), F.S.

The bill creates a definition for “competitive solicitation” identical to the one provided for the public-records exemptions. Creating a definition of “competitive solicitation” and removing references to chapter 287, F.S., allows local governments to use the public-meetings exemption associated with ITNs.

The public-meetings exemption is expanded to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team<sup>40</sup> meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

Because the bill expands the current public-records and –meetings exemptions, it extends the repeal date for those exemptions to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.<sup>41</sup>

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

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

None.

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

This bill retains and expands existing public-records and –meetings exemptions. This bill complies with the requirement of s. 24(c), Art. I of the State Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill expands exemptions, it contains statement of public necessity for the expansion and is subject to a two-thirds vote of each house of the Legislature for enactment as required by 24(c), Art. I of the State Constitution.

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

None.

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

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

None.

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<sup>40</sup> The bill defines “team” to mean a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

<sup>41</sup> Section 24(c), Art. I of the State Constitution.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The exemptions could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create an insignificant fiscal impact on state and local governments due to costs associated with the requirement to make a complete recording of an exempt meeting.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Interested persons have expressed concern that use of the term “agency” in the public-meetings exemption could exclude local governments from using the public-meetings exemption. However, s. 286.011, F.S., which provides public-meetings requirements, uses the term agency as follows:

... any state agency or authority or ... any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution ...

As such, it appears that use of the term “agency” as part of the public-meetings exemption would indicate application to state and local entities.

Interested persons have also expressed concern that failure to make expiration of the public-records exemption contingent upon opening of all *final* bids, proposals, or replies will result in release of records while the competitive solicitation is still ongoing. Therefore, the Legislature may wish to amend the bill to specify that expiration of the public-records exemption is contingent upon opening of all final bids, final proposals, or final replies.

**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.

**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 Governmental Oversight and Accountability Committee

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BILL: SPB 7230

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/State Board of Administration/Alternative Investment Vehicles

DATE: April 3, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill is the result of an Open Government Sunset Review of the public-records exemption for proprietary confidential business information held by the State Board of Administration (SBA) regarding alternative investments. The exemption expires 10 years after the termination of the alternative investment.

This bill reenacts the exemption, which will repeal on October 2, 2011, if this bill does not become law.

The bill revises the definition of what does not constitute proprietary confidential business information. The bill also requires the SBA to maintain a list and a description of the records covered by any verified, written declaration made by a proprietor.

This bill does not expand the scope of the public-records exemption; therefore, it does not require a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends s. 215.44, F.S.

**II. Present Situation:**

**Florida's Public-Records Law**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In

1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provides that:

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.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>1</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>2</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public records” to include 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. 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 “intended to perpetuate, communicate, or formalize knowledge.”<sup>3</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>5</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>6</sup> A bill enacting an exemption<sup>7</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>8</sup>

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<sup>1</sup> Section 119.011(12), F.S.

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

<sup>3</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>4</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>5</sup> Article I, s. 24(c) of the State Constitution.

<sup>6</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>9</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

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

The Open Government Sunset Review Act<sup>11</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>12</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>13</sup> then a public necessity statement and a two-thirds vote for passage are not required.

### **State Board of Administration**

The State Board of Administration (SBA or board) is established by Article IV, s. 4(e) of the State Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board members are commonly referred to

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<sup>7</sup> Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>8</sup> Section 24(c), Art. I of the State Constitution.

<sup>9</sup> Op. Att'y Gen. Fla. 85-62 (1985).

<sup>10</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So. 2d 289 (Fla. 1991).

<sup>11</sup> Section 119.15, F.S.

<sup>12</sup> Section 24(c), Art. I of the State Constitution.

<sup>13</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

as “Trustees.” While the Florida Retirement System Pension Trust Fund represents about 80 percent of the assets under SBA management, the board also manages 37 different funds, including the Florida Hurricane Catastrophe Fund, the Lawton Chiles Endowment Fund and the Local Government Surplus Funds Trust Fund.<sup>14</sup>

Current law sets forth the powers and duties of the SBA in relation to the investment of trust funds.<sup>15</sup> Among the powers granted to the SBA is the authority to make purchases, sales, exchanges, and reinvestments for trust funds.<sup>16</sup> The SBA is charged to ensure that the investments are handled in the best interests of the state, but also to have an appropriately diversified portfolio that maximizes financial returns consistent with the risks incumbent in each investment.

### **Alternative Investments and Alternative Investment Vehicles**

The SBA’s ability to invest moneys available for investments is subject to limitations imposed by a “legal list” of the types of investments and the amount that may be invested in each investment type.<sup>17</sup> Under current law, the board is authorized to invest no more than 10 percent, in the aggregate, of any fund in alternative investments through participation in alternative investment vehicles.<sup>18</sup> An alternative investment is an investment by the SBA in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company<sup>19</sup> through an investment manager.<sup>20</sup> An alternative investment vehicle is the limited partnership, limited liability company, or similar legal structure or investment manager through which the board invests in a portfolio company.<sup>21</sup>

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<sup>14</sup> State Board of Administration Investment Overview, January 12, 2011, at 3.

<sup>15</sup> Section 215.44, F.S.

<sup>16</sup> Section 215.44(2)(a), F.S.

<sup>17</sup> Section 215.47, F.S., provides the “legal list” of types of investments summarized as follows:

- No more than 80 percent of assets can be invested in domestic common stocks.
- No more than 75 percent of assets can be invested in internally managed common stocks.
- No more than 3 percent of equity assets can be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA- insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 5 percent of any fund should be invested in private equity through participation in limited partnerships and limited liability companies.
- No more than 25 percent of assets can be invested in foreign securities.

<sup>18</sup> Section 215.47(15), F.S.

<sup>19</sup> Section 215.44(8)(c)1.c., F.S., defines “portfolio company” to mean corporation or other issuer, any of whose securities are owned by an alternative investment vehicle or the State Board of Administration and any subsidiary of such corporation or other issuer.

<sup>20</sup> Section 215.44(8)(c)1.a., F.S.

<sup>21</sup> Section 215.44(8)(c)1.b., F.S.

## Public-Records Exemption under Review

In 2006, the Legislature created a public record exemption for proprietary confidential business information held by the State Board of Administration.<sup>22</sup> Proprietary confidential business information regarding alternative investments is confidential and exempt<sup>23</sup> from public records requirements for 10 years after the termination of the alternative investment.<sup>24</sup> The exemption applies to proprietary confidential business information held by the SBA before, on, or after October 1, 2006.

### *Operation of the Exemption*

Current law provides that a request to inspect or copy a record that contains proprietary confidential business information must be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the SBA, to verify the following information through a written declaration:<sup>25</sup>

- That the requested record contains proprietary confidential business information and the specific location of such information within the record;
- If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in the Uniform Trade Secrets Act;
- That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and,
- That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.<sup>26</sup>

### *Petition for Public Release*

Any person may petition a court of competent jurisdiction in Leon County, Florida, for an order for the public release of those portions of any record made confidential and exempt under this public record exemption. The petition must be served, along with any other initial pleadings, on the SBA and on the proprietor of the information sought to be released, if the proprietor can be determined through diligent inquiry. The court must make three findings in any order for the release of the record:

- That the record or portion thereof is not a trade secret as defined in the Uniform Trade Secrets Act;
- That a compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and,

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<sup>22</sup> Chapter 2006-163, L.O.F.; codified as s. 215.44(8)(c), F.S.

<sup>23</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>24</sup> Section 215.44(8)(c)2., F.S.

<sup>25</sup> See s. 92.525, F.S., for requirements specific to a verified written declaration.

<sup>26</sup> Section 215.44(8)(c)3., F.S.

- That the release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, the SBA, or any trust fund, the assets of which are invested by the board.<sup>27</sup>

### *Definitions*

“Proprietary confidential business information” means information that has been designated by the proprietor<sup>28</sup> when provided to the SBA as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- Trade secrets as defined in the Uniform Trade Secrets Act.<sup>29</sup>
- Information provided to the board regarding a prospective investment in a private equity fund, venture fund, hedge fund, distress fund, or portfolio company which is proprietary to the provider of the information.
- Financial statements and auditor reports of an alternative investment vehicle.
- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle.
- Information regarding the portfolio positions in which the alternative investment vehicles invest.
- Capital call and distribution notices to investors of an alternative investment vehicle.
- Alternative investment agreements and related records.
- Information concerning investors, other than the SBA, in an alternative investment vehicle.<sup>30</sup>

“Proprietary confidential business information” does not include the:

- Name, address, and vintage year of an alternative investment vehicle and the identity of the principals involved in the management of the alternative investment vehicle.
- Dollar amount of the commitment made by the SBA to each alternative investment vehicle since inception.
- Dollar amount and date of cash contributions made by the SBA to each alternative investment vehicle since inception.
- Dollar amount, on a fiscal-year-end basis, of cash distributions received by the SBA from each alternative investment vehicle.
- Dollar amount, on a fiscal-year-end basis, of cash distributions received by the SBA plus the remaining value of alternative-vehicle assets that are attributable to the board’s investment in each alternative investment vehicle.
- Net internal rate of return of each alternative investment vehicle since inception.
- Investment multiple of each alternative investment vehicle since inception.

<sup>27</sup> Section 215.44(8)(c)4., F.S.

<sup>28</sup> Section 215.44(8)(c)1.e., F.S., defines “proprietor” to mean an alternative investment vehicle, a portfolio company in which the alternative investment vehicle is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, which controls or owns information provided to the SBA.

<sup>29</sup> Chapter 688, F.S.

<sup>30</sup> Section 215.44(8)(c)1.f., F.S.

- Dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the SBA to each alternative investment vehicle.
- The dollar amount of cash profit received by the SBA from each alternative investment vehicle on a fiscal-year-end basis.<sup>31</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>32</sup>

### III. Effect of Proposed Changes:

The bill removes the repeal date, thereby reenacting the public-records exemption for proprietary confidential business information held by the SBA regarding alternative investments. The bill revises the definition of what does not constitute proprietary confidential business information to include:

A description of any compensation, fees, or expenses, including the amount or value, paid or agreed to be paid by a proprietor to any person to solicit the board to make an alternative investment through an alternative investment vehicle. This does not apply to an executive officer, general partner, managing member, or other employee of the proprietor, who is paid by the proprietor to solicit the SBA to make such investments.

In addition, the bill requires the SBA to maintain a list and a description of the records covered by any verified, written declaration made by a proprietor.

Finally, the bill transfers the public record exemptions for the SBA from s. 215.44(8), F.S., to a newly created s. 215.440, F.S.

### IV. Constitutional Issues:

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

None.

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

This bill does not expand the scope of the public-records exemption under review; therefore, it does not require a public necessity statement or a two-thirds vote of each house of the Legislature for passage.

#### C. Trust Funds Restrictions:

None.

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<sup>31</sup> Section 215.44(8)(c)1.g., F.S.

<sup>32</sup> Section 215.44(8)(c)5., F.S.

**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.