

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

**MEETING DATE:** Thursday, February 16, 2012

**TIME:** 1:45 —4:00 p.m.

**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 698</b> Community Affairs / Wise (Identical H 819)	Public Retirement Plans; Specifying applicability of ch. 185, F.S., to certain consolidated governments; providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law, etc.	CA 01/12/2012 Fav/CS GO 02/16/2012 BC
2	<b>SB 794</b> Hays (Identical H 719)	Public Contracting; Prohibiting a governmental unit that contracts for the construction, repair, remodeling, or improving of a facility from imposing conditions that requires, prohibits, encourages, or discourages certain bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization; prohibiting a governmental unit from granting certain awards as a condition of certain contracts; prohibiting certain terms from being placed in bid specifications, project agreements, or other controlling documents; revising the period during which an agency must file a protest following certain contract solicitations or awards, etc.	CA 01/23/2012 Favorable GO 02/16/2012 BC
3	<b>CS/SB 874</b> Education Pre-K - 12 / Benacquisto (Identical CS/H 285)	Sick Leave for School District Employees; Authorizing each district school system to provide a policy allowing the donation of accrued sick leave to any district employee; providing standards for a sick leave transfer policy, etc.	ED 02/06/2012 Fav/CS GO 02/16/2012

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Thursday, February 16, 2012, 1:45 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 878</b> Benacquisto	Personnel Records; Providing that records relating to a performance evaluation of a president of a Florida College System institution are not confidential and exempt from disclosure under s. 119.07(1), F.S., etc.	HE 01/31/2012 Favorable GO 02/16/2012
5	<b>SB 906</b> Hays (Similar CS/H 1089)	Public Records/Investigators and Inspectors/Department of Business and Professional Regulation ; Exempting from public record requirements identifying information relating to current and former investigators and inspectors of the Department of Business and Professional Regulation and their spouses and children; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.	RI 01/26/2012 Favorable GO 02/16/2012
6	<b>CS/SB 910</b> Banking and Insurance / Hays (Similar CS/H 365, Compare CS/S 2088)	Public Retirement Plans; Revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan; providing for retroactive application; revising the definition of the term "compensation" or "salary" for purposes of police officers' pensions; revising provisions relating to benefits paid by a municipality that has its own pension plan, etc.	BI 02/02/2012 Fav/CS GO 02/16/2012 BC
7	<b>CS/SB 1206</b> Commerce and Tourism / Commerce and Tourism (Similar H 7115)	OGSR/Economic Development Agencies; Amending provisions which provide public records exemptions for information held by economic development agencies; saving from repeal the exemption concerning plans, intentions, or interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state; providing that the exemption applies if a request for confidentiality is made before an economic incentive agreement is signed; authorizing the disclosure of specified information relating to a business 180 days after the final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first, etc.	CM 01/19/2012 Fav/CS GO 02/16/2012 BC

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Thursday, February 16, 2012, 1:45 —4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1208</b> Banking and Insurance (Identical H 7111)	OGSR/Unclaimed Property/Department of Financial Services; Revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO 02/07/2012 Temporarily Postponed GO 02/16/2012	
<hr/> <b>A proposed committee substitute</b> for the following bill (SB 1230) is available:			
9	<b>SB 1230</b> Banking and Insurance (Similar H 7107)	OGSR/Public Records Exemption/Consumer Complaints and Inquiries; Amending provisions relating to a public records exemption for certain records from consumer complaints and inquiries regarding matters or activities regulated under the Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption, etc.  BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO 02/16/2012	
10	<b>SB 1232</b> Banking and Insurance (Identical H 7033)	OGSR/Personal Injury Protection and Property Damage Liability Insurance Policies; Amending provisions relating to a public records exemption for personal identifying information and policy numbers in personal injury protection and property damage liability insurance policies; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption, etc.  BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO 02/16/2012	

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**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Thursday, February 16, 2012, 1:45 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	<b>SB 1334</b> Oelrich (Identical S 1280, Compare CS/H 525, CS/S 2024)	Florida Retirement System; Revising definitions of the terms "normal retirement date" and "vested" or "vesting"; requiring new employees to, by default, be enrolled in the investment plan; extending the period during which employees may elect to participate in the pension plan; prohibiting certain employees from choosing to move to the pension plan after a certain period, etc.  GO 02/16/2012 BC RC	
12	<b>CS/SB 1390</b> Judiciary / Joyner (Similar CS/CS/H 1193)	Public Records/Victims of Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence; Providing exemptions from public records requirements for personal identifying and location information of victims of domestic violence, repeat violence, sexual violence, and dating violence held by the Florida Association of Court Clerks and Comptrollers and law enforcement agencies in conjunction with the automated process developed by the association by which a petitioner may request notification of service of an injunction for protection against said violence and other court actions related to the injunction for protection, etc.  JU 01/25/2012 Fav/CS GO 02/16/2012 RC	
13	<b>SB 1862</b> Negrón (Link CS/S 1860)	Public Records/Donor Identifying Information/Division of Insurance Fraud; Amending provisions as created by SB 1860; exempting from public record requirements all identifying information of a donor or prospective donor to the motor vehicle insurance fraud direct-support organization of the Division of Insurance Fraud, etc.  BI 02/02/2012 Favorable GO 02/16/2012	
14	<b>SB 2078</b> Governmental Oversight and Accountability (Identical H 7013)	OGSR/United States Census Bureau Address Information; Repealing provisions which provide a public records exemption for United States Census Bureau address information, etc.  GO 02/16/2012	
TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION

**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Thursday, February 16, 2012, 1:45 —4:00 p.m.

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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Investment Advisory Council</b>			
15	Daniels, Leslie B. (Palm Beach)	12/12/2014	
	Wendt, Gary C. (Ft. Lauderdale)	12/12/2015	
<b>Participant Local Government Advisory Council</b>			
16	Scott, Barbara T. (Port Charlotte)	01/13/2013	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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**BILL:** CS/SB 698

**INTRODUCER:** Committee on Community Affairs and Senators Wise and Gibson

**SUBJECT:** Public Retirement Plans

**DATE:** February 10, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<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..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill provides that a consolidated government that has entered into an interlocal agreement to provide police protection services to another incorporated municipality, in its entirety, is eligible to receive the premium taxes reported for the other municipality under certain circumstances. The bill also authorizes the municipality receiving the police protection services to enact an ordinance levying the premium tax as provided by law.

This bill substantially amends ss. 185.03 and 185.08 of the Florida Statutes.

**II. Present Situation:**

**State Excise Tax on Casualty Insurance Premiums**

Chapter 185, F.S., provides funding for municipal police officers' pension plans. It provides for a "uniform retirement system" with defined benefit retirement plans for municipal police officers and sets standards for the operation and funding of these pension systems.<sup>1</sup> Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of

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<sup>1</sup> Section 185.01, F.S.

.85 percent of the gross amount of receipts of premiums from policyholders on casualty insurance policies covering property within its corporate limits.<sup>2</sup> Revenues from this excise tax are one of the funding sources for police officers' pension plans. Currently, a municipality is eligible to receive state premium taxes (or excise taxes) only on those premiums for casualty insurance policies covering property within its municipal limits even if providing police protection services outside of its municipal limits.<sup>3</sup>

In order to qualify for the premium taxes, a police officers' pension plan must meet certain requirements in ch. 185, F.S.<sup>4</sup> The Department of Management Services (DMS) oversees and monitors these pension plans; however, day-to-day operational control rests with local boards of trustees.<sup>5</sup> Any premium taxes collected by and distributed to a municipality for funding police officers' pension plans have a negative impact on the General Revenue Fund because those premium taxes paid by an insurance company under ch. 185, F.S., to a municipality are allowed as a credit against premium taxes the insurance company must pay to the state under s. 624.509, F.S.

Under current law, a municipality may receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide fire protection services.<sup>6</sup> The municipality receiving fire services must levy the tax authorized by ch. 175, F.S., and copies of the interlocal agreement and the municipal ordinance levying the tax must be provided to the Division of Retirement within DMS.

### **Consolidation**

Consolidation involves combining city and county governments so that the boundaries of the county and an affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent governmental units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial. Nationally, few successful city-county consolidations exist. According to the National Association of Counties, only 31 of the 3,066 county governments in the United States are combined city/county governments.

Section 3, Article VIII, of the Florida Constitution, reads as follows:

Consolidation. —The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

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<sup>2</sup> Section 185.08, F.S.

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

<sup>4</sup> *See* ss. 185.10, 185.085, F.S.

<sup>5</sup> Section 185.05, F.S.

<sup>6</sup> Section 175.041, F.S.

Prior to 1933, the Florida Constitution of 1885 was silent on the subject of consolidation. The 1933 Legislature passed a constitutional amendment specifically declaring its own power to establish a municipal corporation consolidating the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the affected voters. The electorate of Florida adopted this amendment in 1934.

The voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967, and to date, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. Section 9, of Article VIII, of the Constitution of 1885, establishes the Jacksonville/Duval County consolidated charter.

### III. Effect of Proposed Changes:

**Section 1** adds subsection (4) to section 185.03, F.S., which provides that a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, would be eligible to participate with respect to the distribution of premium taxes. The consolidated government must notify the Division of Retirement of the Department of Management Services (division) when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

This chapter applies only to municipalities organized and established pursuant to the laws of the state, and does not apply to the unincorporated areas of any county or counties or to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

**Section 2** adds subsection (b) to section 185.08(1), F.S., which provides that a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, would be eligible to participate with respect to the distribution of premium taxes. The consolidated government must notify the Division of Retirement of the Department of Management Services (division) when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

**Section 3** provides an effective date of July 1, 2012.

**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:

The Department of Revenue (DOR) would be notified by the Division of Retirement (within the Department of Management Services) of additional taxing jurisdiction as a result of the language of this bill. DOR would need to add those jurisdictions to the insurance premium tax form in the annual form process. The form would be adopted in a rule in the annual form adoption process. Additionally, this would require changes to the Insurance Premium Database to provide situs of premiums for allocation purposes.<sup>7</sup>

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

This bill will have a negative impact on the General Revenue Funds because state premium taxes paid by a casualty insurer to fund a municipal police officers' retirement plan are counted as a credit against the premium taxes paid to the state by the insurance company. The fiscal impact is indeterminate, but likely minimal.<sup>8</sup>

Under this bill, an eligible police officers' pension plan sponsored by a municipality providing police protection services pursuant to an interlocal agreement may benefit from the receipt of premium tax revenues collected by the municipality receiving police protection services.

Duval County is the only consolidated government in the State of Florida at this time. This may change in the future and this bill would therefore have a larger cumulative effect.

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<sup>7</sup> Department of Revenue, Senate Bill 698 Fiscal Analysis (November 8, 2011) (on file with the Senate Committee on Community Affairs).

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 2005, the Legislature made similar changes to ch. 175, F.S., relating to the Firefighters' Pension Trust Fund. Sections 175.041 and 175.101, F.S., allow a municipality to receive excise tax monies for firefighter pension plans from another municipality if there is an interlocal agreement in place to provide fire protection services.

**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 Community Affairs on January 12, 2012:**

The CS states the intent of the legislation, not only in s. 185.03, F.S., but also in s. 185.08, F.S. There is little substantive difference between the language changes; the CS reaffirms the intent of the bill in both sections as deemed necessary.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senators Wise and Gibson

578-01847-12

2012698c1

1 A bill to be entitled  
 2 An act relating to public retirement plans; amending  
 3 ss. 185.03 and 185.08, F.S.; specifying applicability  
 4 of ch. 185, F.S., to certain consolidated governments;  
 5 providing that a consolidated government that has  
 6 entered into an interlocal agreement to provide police  
 7 protection services to a municipality within its  
 8 boundaries is eligible to receive the premium taxes  
 9 reported for the municipality under certain  
 10 circumstances; authorizing the municipality receiving  
 11 the police protection services to enact an ordinance  
 12 levying the tax as provided by law; providing an  
 13 effective date.  
 14  
 15 Be It Enacted by the Legislature of the State of Florida:  
 16  
 17 Section 1. Subsection (2) of section 185.03, Florida  
 18 Statutes, is amended to read:  
 19 185.03 Municipal police officers' retirement trust funds;  
 20 creation; applicability of provisions; participation by public  
 21 safety officers.—For any municipality, chapter plan, local law  
 22 municipality, or local law plan under this chapter:  
 23 (2) (a) ~~The provisions of This chapter applies shall apply~~  
 24 only to municipalities organized and established pursuant to the  
 25 laws of the state, and ~~does said provisions shall~~ not apply to  
 26 the unincorporated areas of any county or counties ~~or nor shall~~  
 27 ~~the provisions hereof apply~~ to any governmental entity whose  
 28 police officers are eligible to participate in the Florida  
 29 Retirement System.

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

578-01847-12

2012698c1

30 (b) With respect to the distribution of premium taxes, a  
 31 single consolidated government consisting of a former county and  
 32 one or more municipalities, consolidated pursuant to s. 3 or s.  
 33 6(e), Art. VIII of the State Constitution, is also eligible to  
 34 participate under this chapter. The consolidated government  
 35 shall notify the division when it has entered into an interlocal  
 36 agreement to provide police services to a municipality within  
 37 its boundaries. The municipality may enact an ordinance levying  
 38 the tax as provided in s. 185.08. Upon being provided copies of  
 39 the interlocal agreement and the municipal ordinance levying the  
 40 tax, the division may distribute any premium taxes reported for  
 41 the municipality to the consolidated government as long as the  
 42 interlocal agreement is in effect.  
 43 Section 2. Subsection (1) of section 185.08, Florida  
 44 Statutes, is amended to read:  
 45 185.08 State excise tax on casualty insurance premiums  
 46 authorized; procedure.—For any municipality, chapter plan, local  
 47 law municipality, or local law plan under this chapter:  
 48 (1) (a) Each incorporated municipality in this state  
 49 described and classified in s. 185.03, as well as each other  
 50 city or town of this state which on July 31, 1953, had a  
 51 lawfully established municipal police officers' retirement trust  
 52 fund or city fund, by whatever name known, providing pension or  
 53 relief benefits to police officers as provided under this  
 54 chapter, may assess and impose on every insurance company,  
 55 corporation, or other insurer now engaged in or carrying on, or  
 56 who shall hereafter engage in or carry on, the business of  
 57 casualty insurance as shown by records of the Office of  
 58 Insurance Regulation of the Financial Services Commission, an

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

578-01847-12

2012698c1

59 excise tax in addition to any lawful license or excise tax now  
60 levied by each of the ~~said~~ municipalities, respectively,  
61 amounting to .85 percent of the gross amount of receipts of  
62 premiums from policyholders on all premiums collected on  
63 casualty insurance policies covering property within the  
64 corporate limits of such municipalities, respectively.

65 (b) With respect to the distribution of premium taxes, a  
66 single consolidated government consisting of a former county and  
67 one or more municipalities, consolidated pursuant to s. 3 or s.  
68 6(e), Art. VIII of the State Constitution, is also eligible to  
69 participate under this chapter. The consolidated government  
70 shall notify the division when it has entered into an interlocal  
71 agreement to provide police services to a municipality within  
72 its boundaries. The municipality may enact an ordinance levying  
73 the tax as provided in this section. Upon being provided copies  
74 of the interlocal agreement and the municipal ordinance levying  
75 the tax, the division may distribute any premium taxes reported  
76 for the municipality to the consolidated government as long as  
77 the interlocal agreement is in effect.

78 Section 3. This act shall take effect July 1, 2012.

**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 794

INTRODUCER: Senator Hays

SUBJECT: Public Contracting

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

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

**I. Summary:**

This bill prohibits a governmental unit that contracts for the construction, repair, remodeling, or improving of a facility from imposing certain conditions regarding collective bargaining organizations. The bill also prohibits a governmental unit from granting awards as a condition of specified contracts. The bill prohibits certain terms from being placed in bid specifications, project agreements, or other controlling documents.

The bill extends the length of time for an entity to submit a notice to protest a bid specification from 72 hours to 7 days.

The bill creates an undesignated section of law, and substantially amends s. 120.57 of the Florida Statutes.

**II. Present Situation:**

**State and Federal Constitutional Issues**

Florida is a “right to work” state. Article I, section 6 of the Florida Constitution reads:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.<sup>1</sup> Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.<sup>2</sup>

Certain restrictions may be placed on a union's ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.<sup>3</sup> In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions' judicially created duty of fair representation and nonunion members' First Amendment rights.<sup>4</sup> The Supreme Court has held that a local government's restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.<sup>5</sup> In a more recent case, the Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.<sup>6</sup> The Court held that the state was under no obligation to aid unions in their political activities, and the state's decision not to do so was not abridgement of unions' free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state's support.<sup>7</sup>

### **Federal Labor Law**

The Federal National Labor Relations Act (NLRA) of 1935<sup>8</sup> and the Federal Labor Management Relations Act of 1947<sup>9</sup> constitute a comprehensive scheme of regulations guaranteeing to employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. Other federal labor-relations statutes include the Labor-Management Reporting and Disclosure Act<sup>10</sup> and the Railway Labor Act. A number of states have statutes requiring nongovernmental employers to pay prevailing wages to workers on public works projects.<sup>11</sup>

<sup>1</sup> See *Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff'd* 723 F.2d 918 (11th Cir. 1983).

<sup>2</sup> *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).

<sup>3</sup> *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff'd on other grounds*, 375 U.S. 96 (1963); *AFSCME Local 3032 v. Delaney*, 458 So. 2d 372 (Fla. 1st DCA 1984).

<sup>4</sup> *Comm'n Workers of Am. v. Beck*, 487 U.S. 735 (1988).

<sup>5</sup> *Charlotte v. Local 660, Int'l Assoc. of Firefighters*, 426 U.S. 283 (1976).

<sup>6</sup> *Ysursa v. Pocatello Education Assoc.*, 129 S. Ct. 1093 (2009).

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

<sup>8</sup> 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

<sup>9</sup> 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

<sup>10</sup> 29 U.S.C. §§ 401 to 531.

<sup>11</sup> See generally, 7 A.L.R. 5th 444.

## Project Labor Agreements

There appears to be no unified definition of project labor agreement (PLA). A case<sup>12</sup> sometimes cited for a definition specifies a project legal agreement as:

an agreement between a construction project owner and a labor union that a contractor must sign in order to perform work on the project. The union is designated the collective bargaining representative for all employees on the project and agrees that no labor strikes or disputes will disrupt the project. The contractor must abide by certain union conditions, such as hiring through union hiring halls and complying with union wage rules.

New York law<sup>13</sup> defines a PLA as a “pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.”

In 2009, President Obama signed Executive Order 13502 allowing federal executive agencies to require contractors on large-scale government construction projects to enter into PLAs as a condition of being awarded a contract.

## Federal Wage Regulation

Both federal<sup>14</sup> and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.<sup>15</sup> Examples of federal laws include:

- **The Davis-Bacon and Related Acts**<sup>16</sup> - Applies to federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000; requires all contractors and subcontractors performing work on covered contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.
- **The McNamara-O'Hara Service Contract Act**<sup>17</sup> - Applies to federal or District of Columbia contracts in excess of \$2,500; requires contractors and subcontractors performing work on these contracts to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.

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<sup>12</sup> *Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority*, 115 Nev. 151, 979 P. 2d 224 (Nev., 1999).

<sup>13</sup> N.Y. LAB. LAW § 222: NY Code - Section 222.

<sup>14</sup> A list of examples of federal laws that protect employees is located at: United States Department of Labor, Employment Laws Assistance, <http://www.dol.gov/compliance/laws/main.htm> (last visited Jan. 18, 2012).

<sup>15</sup> See United States Department of Labor, A Summary of Major DOL Laws, <http://www.dol.gov/opa/aboutdol/lawsprog.htm> (last visited Jan. 18, 2012).

<sup>16</sup> Pub. L. No. 107-217, 120 Stat. 1213 (codified as amended at 40 U.S.C. §§ 3141-48; the Davis-Bacon Act has also been extended to approximately 60 other acts).

<sup>17</sup> Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 351-58).

- **The Migrant and Seasonal Agricultural Workers Protection Act<sup>18</sup>** - Covers migrant and seasonal agricultural workers who are not independent contractors; requires, among other things, disclosure of employment terms and timely payment of wages owed.
- **The Contract Work Hours and Safety Standards Act<sup>19</sup>** - Applies to federal service contracts and federal and federally assisted construction contracts over \$100,000; requires contractors and subcontractors performing work on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.
- **The Copeland "Anti-Kickback" Act<sup>20</sup>** - Applies to federally funded or assisted contracts for construction or repair of public buildings; prohibits contractors or subcontractors performing work on covered contracts from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

The Fair Labor Standards Act (FLSA)<sup>21</sup> establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime hours worked. The FLSA establishes standards for minimum wages,<sup>22</sup> overtime pay,<sup>23</sup> recordkeeping,<sup>24</sup> and child labor.<sup>25</sup> Over 130 million workers are covered under the act, as the FLSA applies to most classes of workers.<sup>26</sup> The FLSA entails two types of coverage:

- Enterprises engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or working on goods or materials that have been moved in or produced in interstate commerce and have an annual volume of sales or business of \$500,000, as well as hospitals, schools, and public agencies;
- Individuals engaged in interstate commerce, the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production.<sup>27</sup>

The FLSA provides that:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.<sup>28</sup>

<sup>18</sup> Pub. L. No. 97-470, 96 Stat. 2583 (codified as amended at 29 U.S.C. §§1801-72).

<sup>19</sup> Pub. L. No. 87-581, 76 Stat. 357 (codified as amended at 40 U.S.C. §§ 3701-08).

<sup>20</sup> 18 U.S.C. § 874.

<sup>21</sup> 29 U.S.C. Ch. 8.

<sup>22</sup> 29 U.S.C. § 206.

<sup>23</sup> 29 U.S.C. § 207.

<sup>24</sup> 29 U.S.C. § 211.

<sup>25</sup> 29 U.S.C. § 212.

<sup>26</sup> United States Department of Labor, Employment Law Guide – Minimum Wage and Overtime Pay, <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Jan. 18, 2012).

<sup>27</sup> 29 U.S.C. § 203(f), (s); U.S. DEPT. OF LABOR, WH PUBLICATION 1282, HANDY REFERENCE GUIDE TO THE FAIR LABOR STANDARDS ACT 2-3 (2010); United States Department of Labor, *supra* note 26.

<sup>28</sup> 29 U.S.C. § 207(a)(1).

Thus, if a covered employee works more than forty hours in a week, then the employer must pay at least time and half for those hours over forty. A failure to pay is a violation of the FLSA.<sup>29</sup> The FLSA also establishes a federal minimum wage in the United States.<sup>30</sup> The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.<sup>31</sup>

The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;<sup>32</sup>
- Criminal prosecutions by the United States Department of Justice;<sup>33</sup> or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.<sup>34</sup>

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.<sup>35</sup> The employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.<sup>36</sup>

### **State Wage Regulation**

Under the Florida Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.<sup>37</sup> Article X, s. 24(c) of the Florida Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." The current state minimum wage is \$7.67 per hour, which is the federal rate, as of January 1, 2012.<sup>38</sup> Federal law requires the payment of the higher of the federal or state minimum wage.<sup>39</sup>

### **Local Bids and Contracts for Public Construction Works**

Section 255.20, F.S., describes the process for bids and contracts for public construction works undertaken by counties, municipalities, special districts, and other political subdivisions of the state to award contracts for construction projects. Typically, any construction project with a cost in excess of \$300,000, and any electrical project costing more than \$75,000, must be competitively awarded. However, s. 255.20, F.S., lists 11 types of projects where a competitive

<sup>29</sup> There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Jan. 18, 2012).

<sup>30</sup> 29 U.S.C. § 206.

<sup>31</sup> 29 U.S.C. § 218(a).

<sup>32</sup> 29 U.S.C. § 216(c).

<sup>33</sup> 29 U.S.C. § 216(a).

<sup>34</sup> 29 U.S.C. § 216(b).

<sup>35</sup> 29 U.S.C. § 216(b).

<sup>36</sup> 29 U.S.C. § 216(b).

<sup>37</sup> See FLA. CONST. art. X, s. 24 (adopted in 2004); s. 448.110, F.S.

<sup>38</sup> See Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida. <http://www.floridajobs.org/minimumwage/index.htm> (Last visited Jan. 18, 2012).

<sup>39</sup> 29 U.S.C. § 218(a).

award is not required, such as emergency repair of facilities damaged by hurricanes, riots, or other “sudden unexpected turn of events.”

### **Preference to State Residents**

Section 255.099, F.S., requires that all contracts for construction funded by the state contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have substantially equal qualifications to those of non-residents. Local construction contracts funded with local funds have the option to require such provisions. Contractors required to hire Floridians must contact the Agency for Workforce Innovation to post the jobs on the state’s job bank system ([www.employflorida.com](http://www.employflorida.com)). However, for work involving federal aid funds, the contract provision may not be enforceable to the extent it conflicts with federal law.

### **Administrative Protests of Contract Solicitations or Awards**

Section 120.57(3), F.S., specifies the procedures to be followed in administrative protests of agency bid actions.<sup>40</sup> If an entity wishes to protest the specifications contained in a bid solicitation, or if an entity wishes to protest a bid decision by an agency, the entity must provide notice to the agency within 72 hours after the posting of the solicitation or decision.<sup>41</sup> The entity then has 10 days after the date of the notice of protest to file a formal written protest.<sup>42</sup>

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

**Section 1** creates an undesignated section of law which defines the term “facility” and “governmental unit” for the purpose of public contracting. This section prohibits a governmental unit from entering into or expending funds under a contract for the construction, repair, remodeling, or demolition of a facility if the contract or a subcontract under the contract contains a term that:

- (a) Requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or other related construction projects.
- (b) Discriminates against bidders, contractors, or subcontractors based on the status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or other related construction projects.

A governmental unit may not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in the above paragraphs (a) or (b) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

<sup>40</sup> Rule 28-110.001, F.A.C., lists those provisions governed by these bid protest regulations: Chapters 24, 255, 287, 334 through 349, and Sections 282.303 through 282.313, F.S.

<sup>41</sup> Section 120.57(3)(b), F.S.; Rule 28-110.003, F.A.C.

<sup>42</sup> Section 120.57(3)(b), F.S.; Rule 28-110.004, F.A.C.

The bill prohibits the terms included in the above paragraphs (a) and (b) from being placed in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a facility. Any such included term is void and of no effect.

This section does not:

- Apply to construction contracts executed before the effective date of this act.
- Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. ss. 151-169.
- Interfere with labor relations of parties that are protected under the National Labor Relations Act, 29 U.S.C. ss. 151-169.

**Section 2** amends s. 120.57(3)(b), F.S., to increase the period for the notice of protest for bid specifications from 72 hours to 7 days. The bill also provides that Saturdays, Sundays, and state holidays are excluded from the computation of all time periods in the paragraph, not just 72 hour time periods.

The effect of these provisions together means that agencies may not know a competitive solicitation is being protested for up to ten days, and formal written protests could potentially be filed 14 days after the initial notice, instead of 10. Extending these deadlines may make it easier for affected vendors to assert their claims; it will also increase the uncertainty and time required to complete an agency competitive solicitation process.

**Section 3** provides that the bill shall take effect upon becoming law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The changes to s. 120.57(3), F.S., would necessitate the Administration Commission to adopt rules.

**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.

By Senator Hays

20-00466A-12

2012794\_\_

A bill to be entitled

An act relating to public contracting; providing definitions for the terms "governmental unit" and "facility"; prohibiting a governmental unit that contracts for the construction, repair, remodeling, or improving of a facility from imposing conditions that requires, prohibits, encourages, or discourages certain bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization; prohibiting a governmental unit from granting certain awards as a condition of certain contracts; prohibiting certain terms from being placed in bid specifications, project agreements, or other controlling documents; providing exceptions; amending s. 120.57, F.S.; revising the period during which an agency must file a protest following certain contract solicitations or awards; providing an effective date.

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

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

(a) "Facility" means an actual physical improvement to real property that is owned or leased, directly or through a building authority, by a governmental unit, including, but not limited to, roads, bridges, runways, rails, or a building or structure, along with the building's or structure's grounds, approaches, services, and appurtenances.

(b) "Governmental unit" means this state; a county,

20-00466A-12

2012794\_\_

municipality, school district, Florida college system institution, or public university that receives appropriations from this state; or any agency, board, commission, authority, or instrumentality of the state.

(2) A governmental unit may not enter into or expend funds under a contract for the construction, repair, remodeling, or demolition of a facility if the contract or a subcontract under the contract contains a term that:

(a) Requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or other related construction projects.

(b) Discriminates against bidders, contractors, or subcontractors based on the status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or other related construction projects.

(3) A governmental unit may not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in paragraph (2) (a) or paragraph (2) (b) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit. This section does not prohibit a governmental unit from awarding a grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a collective bargaining organization, if being or becoming a party or adhering to an

20-00466A-12 2012794  
 59 agreement with a collective bargaining organization is not a  
 60 condition for award of the grant, tax abatement, or tax credit,  
 61 and if the governmental unit does not discriminate against a  
 62 private owner, bidder, contractor, or subcontractor in the  
 63 awarding of that grant, tax abatement, or tax credit based upon  
 64 the status as being or becoming, or the willingness or refusal  
 65 to become, a party to an agreement with a collective bargaining  
 66 organization.

67 (4) A governmental unit or a construction manager or other  
 68 contracting entity acting on behalf of a governmental unit may  
 69 not place any of the terms described in subsection (2) in bid  
 70 specifications, project agreements, or other controlling  
 71 documents relating to the construction, repair, remodeling, or  
 72 demolition of a facility. Any such included term is void and of  
 73 no effect.

74 (5) This section does not:

75 (a) Apply to construction contracts executed before the  
 76 effective date of this act.

77 (b) Prohibit employers or other parties from entering into  
 78 agreements or engaging in any other activity protected by the  
 79 National Labor Relations Act, 29 U.S.C. ss. 151-169.

80 (c) Interfere with labor relations of parties that are  
 81 protected under the National Labor Relations Act, 29 U.S.C. ss.  
 82 151-169.

83 Section 2. Paragraph (b) of subsection (3) of section  
 84 120.57, Florida Statutes, is amended to read:

85 120.57 Additional procedures for particular cases.—

86 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO  
 87 CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter

20-00466A-12 2012794  
 88 shall use the uniform rules of procedure, which provide  
 89 procedures for the resolution of protests arising from the  
 90 contract solicitation or award process. Such rules shall at  
 91 least provide that:

92 (b) Any person who is adversely affected by the agency  
 93 decision or intended decision shall file with the agency a  
 94 notice of protest in writing within 72 hours after the posting  
 95 of the notice of decision or intended decision. With respect to  
 96 a protest of the terms, conditions, and specifications contained  
 97 in a solicitation, including any provisions governing the  
 98 methods for ranking bids, proposals, or replies, awarding  
 99 contracts, reserving rights of further negotiation, or modifying  
 100 or amending any contract, the notice of protest shall be filed  
 101 in writing within 7 days ~~72 hours~~ after the posting of the  
 102 solicitation. The formal written protest shall be filed within  
 103 10 days after the date the notice of protest is filed. Failure  
 104 to file a notice of protest or failure to file a formal written  
 105 protest shall constitute a waiver of proceedings under this  
 106 chapter. The formal written protest shall state with  
 107 particularity the facts and law upon which the protest is based.  
 108 Saturdays, Sundays, and state holidays shall be excluded in the  
 109 computation of the ~~72-hour~~ time periods provided by this  
 110 paragraph.

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

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

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

**BILL:** CS/SB 874

**INTRODUCER:** Education Pre-K - 12 Committee and Senator Benacquisto

**SUBJECT:** Sick Leave for School District Employees

**DATE:** February 9, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Abrams	deMarsh-Mathues	ED	Fav/CS
2.	Jenkins	Roberts	GO	Pre-meeting
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:**

The bill grants school districts the option of creating policies which permit district employees to donate their unused sick leave to a non-relative district employee. Recipients must have exhausted all of their own sick leave before using donated leave. Also, districts that implement these policies must require documentation from the physician of the person receiving the sick leave, establish a minimum number of sick leave days needed by the recipient before participating in the program, require unused transferred sick leave to be returned to the donating employee, and establish a minimum number of sick leave days a donating employee must retain after transferring sick leave days. Donated sick leave has no terminal value.

**II. Present Situation:**

Currently, a leave of absence is available to any member of the instructional staff<sup>1</sup> or any other employee of a school district who is employed on a full-time basis and is unable to perform his or her duties due to personal sickness, accident disability, or extended personal illness, or because of illness or death of their father, mother, brother, sister, husband, wife, child, other

<sup>1</sup> "Instructional staff" is not a defined term in s. 1012.61, F.S. Section 1012.01(2), F.S., does, however, define "instructional personnel," which includes employees such as classroom teachers, guidance counselors, librarians, and media specialists.

close relative, or member of their household and needs to be absent from work.<sup>2</sup> Instructional staff members, who are employed on a full-time basis, are entitled to four days of sick leave as of the first day of employment of each contract year, and one day of sick leave for each month of employment, which is credited to them at the end of the month.<sup>3</sup> All other employees must be credited with four sick days at the end of the first month of employment of each contract year and one day of sick leave for each month of employment thereafter.<sup>4</sup>

Each member of the instructional staff and all other employees are entitled to earn no more than one day of leave times the number of months of employment during the year of employment.<sup>5</sup> Sick leave is cumulative from year to year.<sup>6</sup> There is no limit on the number of sick leave days a member of the instructional staff or an educational support employee may accrue, except that at least one-half of this sick leave must be established within the school district granting the leave.<sup>7</sup>

School districts are authorized to adopt rules permitting annual payment for accumulated sick leave that is earned for that year and is unused at the end of the school year. This is based on the daily rate of pay of the employee, multiplied by up to 80 percent.<sup>8</sup> Days for which such payment is received are deducted from an employee's accumulated leave balance.<sup>9</sup> According to the Florida Department of Education, "[t]he extent to which districts have adopted an annual unused sick leave payout policy is not known."<sup>10</sup>

School districts are currently required to provide a policy that allows employees to donate sick leave to a spouse, child, parent, or sibling whom is also employed by the school district.<sup>11</sup> This policy must specify that the recipient may not use the donated sick leave until all of his or her sick leave has been depleted, excluding sick leave from a sick leave pool. Donated sick leave has no terminal value.<sup>12</sup> School districts may also allow employees to donate unused sick leave to a sick leave pool which other employees may use after they have exhausted their own sick leave.<sup>13</sup>

Currently, there is no mechanism for school districts to create policies providing for donation of sick leave to a particular individual who is not a relative. However, sick leave transfer among non-relatives is already an option for state agency employees.<sup>14</sup> The law requires the Department of Management Services to adopt rules governing the management of state employees.<sup>15</sup> In this

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<sup>2</sup> s. 1012.61(1), F.S.

<sup>3</sup> s. 1012.61(2)(a)1., F.S.

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

<sup>5</sup> *Id.* The statute provides additional rules for terminal leave.

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

<sup>7</sup> *Id.* Educational support employees include those whose job functions are neither administrative nor instructional, but whose work supports the educational process, such as technicians, clerical workers, and skilled craft workers. See 1012.01(6), F.S. The statute does not specify the limitations on sick leave for other types of employees such as school officers or administrative personnel.

<sup>8</sup> s. 1012.61(2)(a)3., F.S.

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

<sup>10</sup> Florida Department of Education, 2012 Agency Bill Analysis of HB 285 (October 31, 2011). On file with the Senate Committee on Education Pre-K – 12.

<sup>11</sup> s. 1012.61(2)(e), F.S.

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

<sup>13</sup> s. 1012.61(3), F.S.

<sup>14</sup> Rule 60L-34.0042(5), F.A.C.

<sup>15</sup> s. 110.1055, F.S.

context, state employees include persons employed by state agencies such as the Public Defender and the Florida Public Service Commission.<sup>16</sup> The Department of Management Services provides for the establishment of a formal sick leave transfer program amongst employees of state agencies.<sup>17</sup>

While school districts are not considered a state agency,<sup>18</sup> the rule provides useful guidance for district policies. The rule specifies that an employee must maintain an 80 hour balance in his or her own sick leave account before donating any sick leave.<sup>19</sup> Additionally, the rule outlines the conditions required for the donation of sick leave, including that the employee receiving the leave has used all accrued sick and annual leave, suffered a documented illness which requires absence from the workplace for a minimum of five days, is not eligible for disability leave, and has not used more than 1040 hours of transferred sick leave credits in the preceding twelve month period.<sup>20</sup> Upon documented termination of the qualifying illness, unused transferred sick leave credit is returned to those employees whose donated credits have not been used.<sup>21</sup> Transferred sick leave has no terminal value.<sup>22</sup>

### III. Effect of Proposed Changes:

The bill authorizes, but does not require, districts to provide a policy which permits employees to donate their unused sick leave to a non-relative recipient. Recipients must have exhausted all of their own sick leave before using donated leave. Donated sick leave has no terminal value.

District school systems that choose to adopt these policies must:

- Require the recipient of sick leave days to provide documentation of the illness, accident, or injury from the treating physician;
- Establish a minimum number of sick leave days needed by the recipient to participate in the sick leave program;
- Require that any unused transferred sick leave be returned to the authorizing employee whose donated sick leave has not been used; and
- Establish a minimum number of sick leave days that an authorizing employee must retain.

The bill provides an effective date of July 1, 2012.

### IV. Constitutional Issues:

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

None.

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<sup>16</sup> s. 216.011(1)(qq), F.S.

<sup>17</sup> Rule 60L-34.0042(5), F.A.C.

<sup>18</sup> s. 216.011(1)(qq), F.S.

<sup>19</sup> Rule 60L-34.0042(5), F.A.C.

<sup>20</sup> *Id.*

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

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

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill grants district employees options to donate their sick leave to other district employees. This may prevent a loss of income for district employees who have used up all their sick leave.

**C. Government Sector Impact:**

Currently, school districts are permitted to adopt policies which allow for up to 80 percent payout of unused sick leave at the end of each school year, as well as policies that allow for a terminal payout plan for accumulated sick leave.<sup>23</sup> An employee who transfers sick leave may forego an end-of-year payout for those donated hours, which is paid at a maximum of 80 percent of the accumulated sick leave balance earned in the current year. Any leave that was not used by the recipient will be returned to the authorizing employee whose donated sick leave has not yet been used and may be included in their calculated end-of-year payout. Therefore any leave that is used by the recipient will produce a maximum savings of up to 80 percent of the employee who transferred the sick leave. The same savings would be realized if a district has adopted policies regarding a terminal payout plan for accumulated sick leave. Because school districts are permitted to create their own policies, the specific fiscal effects are indeterminate.<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>23</sup> Section 1012.61(2)(a)3. and 4., F.S.

<sup>24</sup> Florida Department of Education, *2012 Agency Bill Analysis of HB 285* (Oct. 31, 2011).

**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 Education Pre-K - 12 Committee on February 6, 2012:**

The committee substitute provides that district school board policies which permit district employees to donate their unused sick leave to a non-relative district employee must:

- Require documentation from the treating physician;
- Establish a minimum number of sick leave days needed to participate in the program;
- Require that unused transferred sick leave be returned to the donor employee; and
- Establish a minimum number of sick leave days that an authorizing employee must retain.

- B. **Amendments:**

None.

By the Committee on Education Pre-K - 12; and Senator  
Benacquisto

581-03006-12

2012874c1

1 A bill to be entitled  
2 An act relating to sick leave for school district  
3 employees; amending s. 1012.61, F.S.; authorizing each  
4 district school system to provide a policy allowing  
5 the donation of accrued sick leave to any district  
6 employee; providing standards for a sick leave  
7 transfer policy; providing an effective date.

8  
9 Be It Enacted by the Legislature of the State of Florida:

10  
11 Section 1. Paragraph (e) of subsection (2) of section  
12 1012.61, Florida Statutes, is amended to read:

13 1012.61 Sick leave.—

14 (2) PROVISIONS GOVERNING SICK LEAVE.—The following  
15 provisions shall govern sick leave:

16 (e) *Use by family member or other district employee.*—

17 1. Each district school system must provide a policy under  
18 which a district employee may authorize his or her spouse,  
19 child, parent, or sibling who is also a district employee to use  
20 sick leave that has accrued to the authorizing employee.

21 2. Each district school system may provide a policy under  
22 which a district employee may authorize any district employee to  
23 use sick leave that has accrued to the authorizing employee. The  
24 district policy must:

25 a. Require that the recipient provide documentation, by the  
26 treating physician, of the illness, accident, or injury for  
27 which leave is otherwise authorized under subsection (1).

28 b. Establish a minimum number of sick leave days needed by  
29 the recipient to participate in the sick leave program.

Page 1 of 2

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

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30 c. Require that any unused transferred sick leave be  
31 returned to the authorizing employee whose donated sick leave  
32 has not yet been used.

33 d. Establish the minimum number of sick leave days that an  
34 authorizing employee must retain.

35  
36 In developing the policy, the district school board must provide  
37 that the recipient may not use the donated sick leave until all  
38 of his or her sick leave has been depleted, excluding sick leave  
39 from a sick leave pool, if the recipient participates in a sick  
40 leave pool. Donated sick leave under this paragraph shall have  
41 no terminal value as provided in this subsection.

42 Section 2. This act shall take effect July 1, 2012.

Page 2 of 2

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

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 878

INTRODUCER: Senator Benacquisto

SUBJECT: Personnel Records

DATE: February 14, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	deMarsh-Mathues	HE	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

**I. Summary:**

This bill amends the public records exemption for Florida College System (FCS) institution limited access personnel records to mirror the public records exemption for State University System institution limited-access personnel records. The bill maintains the current public records exemption for limited-access records; but provides that records relating to a performance evaluation of a president of a FCS institution are not confidential and exempt from public records requirements.

This bill substantially amends section 1012.81 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. 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:

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,

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

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

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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>

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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.

<sup>5</sup> Section 119.011(11), 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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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 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>12</sup> If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

### Personnel Records

Each Florida College System institution board of trustees is responsible for appointing, suspending, or removing the president of their respective institution.<sup>14</sup> Each board of trustees is required to conduct annual evaluations of the president in accordance with State Board of Education rule.<sup>15</sup> Upon completion, the evaluations are to be submitted to the State Board of Education for review.<sup>16</sup> The evaluations are required to address the achievement of the performance goals established by the accountability process implemented pursuant to s. 1008.45, F.S., and the performance of the president in achieving the annual and long-term goals and objectives established in the Florida College System institution's employment accountability program implemented pursuant to s. 1012.86, F.S.<sup>17</sup>

Under current law, the State Board of Education is required by rule to prescribe the content and custody of limited-access records which a Florida College System institution may maintain on its employees.<sup>18</sup> The rule adopted by the state board does not prescribe the content of limited-access records; but instead provides an expansive general definition of what is confidential and exempt.<sup>19</sup>

Prior to 1995, State University System (SUS) institutions had an identical exemption. The broad exemption authorized state universities to prescribe the content and custody of the limited-access records maintained on their employees, provided the records were limited to information reflecting evaluations of employee performance. Courts held this exemption applied to copies of minutes and other documentation indicating votes on tenure or promotion applications of university employees and also to investigate reports about university athletic staff.<sup>20</sup>

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<sup>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 1001.64(19), F.S.

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

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

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

<sup>18</sup> According to state board rule, personnel records must contain information for efficient personnel administration, which must include, but not be limited to: dates of appointment, periods of employment, contract status, duties performed, records of leave, and evidence of factors used to calculate salary, retirement system records, and related documentation as determined by the college. Rule 6A-14.047, F.A.C.

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

<sup>20</sup> See *Catanese v. Ceros-Livingston*, 599 So.2d 1021 (Fla. 4th DCA 1992), review denied, 613 So.2d 2 (Fla. 1992); *Tallahassee Democrat, Inc. v. Florida Board of Regents*, 314 So.2d 164 (Fla. 1st DCA 1975).

In 1995<sup>21</sup>, the Legislature restricted the contents of limited-access records maintained by a SUS institution as follows:

- Records containing information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee;
- Records relating to an investigation of employee misconduct which are confidential until the conclusion of the investigation or the investigation ceases to be active as defined by law;
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made;
- For sexual harassment investigations, portions of the records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records; and
- Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records.

### III. Effect of Proposed Changes:

**Section 1** amends s. 1012.81, F.S., providing that records relating to a performance evaluation of a president of a Florida College System institution are not confidential and exempt from public records requirements.

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

### IV. Constitutional Issues:

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

None.

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

As this bill limits a public records exemption allowing more records to be available to the public, this bill is not subject to the two-thirds vote requirement of both houses of the Legislature for creating or expanding a public records exemption.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>21</sup> Ch. 95-246, L.O.F.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Florida College System institutions may incur minor expenses in providing the records to the public; however, current law authorizes agencies to charge modest fees for copies of public records.

**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.

By Senator Benacquisto

27-00574-12

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1 A bill to be entitled  
 2 An act relating to personnel records; amending s.  
 3 1012.81, F.S.; providing that records relating to a  
 4 performance evaluation of a president of a Florida  
 5 College System institution are not confidential and  
 6 exempt from disclosure under s. 119.07(1), F.S.;

7 providing an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10

11 Section 1. Section 1012.81, Florida Statutes, is amended to  
 12 read:

13 1012.81 Personnel records.—Rules of the State Board of  
 14 Education shall prescribe the content and custody of limited-  
 15 access records that ~~which~~ a Florida College System institution  
 16 may maintain on its employees. The ~~Such~~ records must ~~shall~~ be  
 17 limited to information reflecting evaluations of employee  
 18 performance and may ~~shall~~ be open to inspection only by the  
 19 employee and by officials of the college who are responsible for  
 20 supervision of the employee. ~~Such~~ Limited-access employee  
 21 records are confidential and exempt from the provisions of s.  
 22 119.07(1); however, records relating to a performance evaluation  
 23 of a president of a Florida College System institution are not  
 24 confidential and exempt from the provisions of s. 119.07(1).

25 Except as required for use by the president in the discharge of  
 26 his or her official responsibilities, the custodian of limited-  
 27 access employee records may release information from the ~~such~~  
 28 records only upon authorization in writing from the employee or  
 29 the president or upon order of a court of competent

Page 1 of 2

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

27-00574-12

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30 jurisdiction.

31 Section 2. This act shall take effect July 1, 2012.

Page 2 of 2

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

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 906

INTRODUCER: Senator Hays

SUBJECT: Public Records/Investigators and Inspectors/Department of Business and Professional Regulation

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Seay</u>	<u>Roberts</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill expands the public records exemption for agency personnel information to include the home addresses, telephone numbers, and photographs of current or former investigators and inspectors of the Department of Business and Professional Regulation (DBPR). The bill also exempts the home addresses, telephone numbers, and places of employment of the spouses and children of current or former investigators and inspectors of the Department of Business and Professional Regulation, as well as the names and locations of schools and day care facilities attended by their children. The bill requires investigators and inspectors of the Department of Business and Professional Regulation to have made reasonable efforts to protect their personal information from being accessible from alternate means.

This bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemptions as required by the State Constitution.

This bill substantially amends section 119.071 of the Florida Statutes.

## II. Present Situation:

### Public Records Law

The State of Florida has a long history of providing public access to governmental records. 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:

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

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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,

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

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

<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.

<sup>5</sup> Section 119.011(11), F.S.

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;

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<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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires consideration of 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?

### **Agency Personnel Information**

Currently, under s. 119.071(4), F.S., specified personal information relating to the employees of agencies is protected from disclosure. For example, for current or former code enforcement officers, s. 119.071(4)5., F.S., provides a public records exemption for:

- Their home addresses, telephone numbers, and photographs;
- The home addresses, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.

Section 119.071(4), F.S., provides similar records exemptions for the following agency personnel:

- Active or former law enforcement personnel;
- Department of Children and Family Services;
- Department of Health;
- Department of Revenue;
- Florida Supreme Court justices;
- Former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors;
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support hearing officers;
- Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency;
- Current or former United States attorneys and assistant United States attorneys;

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<sup>16</sup> Section 119.15(4)(b), F.S.

- Former judges of the United States of Appeal, United States district judges, and United States magistrate judges;
- Current or former code enforcement officers;
- Current or former guardians ad litem;
- Current or former juvenile probation officers; and
- Supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social service counselors of the Department of Juvenile Justice.

### **Department of Business and Professional Regulation**

The Department of Business and Professional Regulation (department) is delegated responsibility for both professional regulation and business regulation. The department's division of regulation monitors more than twenty professions and related businesses to ensure that those professions and businesses comply with the rules and standards set by the Legislature, professional boards, and the department. Department inspectors and investigators are required to investigate any complaint that is received in writing, to determine if it is legally sufficient, to review whether it is either signed by the complainant or if not signed, to determine if it is believed to be true after an initial inquiry by the agency.<sup>17</sup> In addition, department inspectors and investigators are required to complete other routine inspections by the department.<sup>18</sup> In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.<sup>19</sup> The department not only conducts and prosecutes violations of offending agency rules and regulations, but the agency also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession by the department.<sup>20</sup>

Presently, the home addresses, telephone numbers, and photographs of current or former investigators and inspectors of the department; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are not exempt from public disclosure.<sup>21</sup> The department's Alcoholic Beverages and Tobacco division does employ some sworn police officers (agents) to conduct investigations for that division. Agents can complete investigations in cooperation with investigators or inspectors or with other agents. However, only the agents who are sworn law enforcement officer are currently protected under the exemption for law enforcement personnel in s. 119.017(4)(d)1.a., F.S., but not the agency's other inspectors or investigators.

The department's inspectors and investigators have reported incidents of threats and abuse. According to the department, after issuing a citation in an Orlando salon, an investigator received

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<sup>17</sup> Section 455.225(1)(a), F.S.

<sup>18</sup> See Rule 61G5-30.001, F.A.C.

<sup>19</sup> See Rule 61G5-30.004, F.A.C.

<sup>20</sup> Section 455.2277, F.S.

<sup>21</sup> The Department of Business and Professional Regulation does not routinely collect the names and locations of the schools and day care facilities attended by the children of department investigators and inspectors. However, the department has expressed an interest in having this information part of the exemption in the event that the information has been made part of the personnel file or case file inadvertently. Otherwise, the department is concerned that this information could be available to the public when completing a public records request.

numerous threatening phone calls to her home telephone number. The threats did not cease until the investigator reported the threats to local law enforcement.

In 2006, an Orlando area investigator was verbally abused when a licensee told her that he wished harm upon her before the end of the day.<sup>22</sup> In 2007 and then again in 2008, another Orlando investigator had her state vehicle vandalized while it was parked outside her home at night.<sup>23</sup>

Two Jacksonville investigators received threatening calls to their home numbers after conducting investigations. In 2008, a Jacksonville inspector had to have his personal cell phone number changed after it had been compromised by a private investigator. Both investigators have since had their telephone numbers changed to be unlisted. In 2007, an inspector in Ft. Myers arrived home to find a subject of one of her investigations sitting on her front doorstep. Another inspector from the same regional office had a convicted felon call her at home in late 2008.

The department's Miami regional office has reported multiple incidents as well in 2008. On one occasion, an investigator noticed one of the subject's of his investigation, an investigation which resulted in the subject's arrest, driving slowly past his house. Another had numerous subjects of investigations knock on their front door after their home address had been posted at the department. And yet another had numerous threatening phone calls on her cell phone, and threats to both her family and children.<sup>24</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071, F.S., providing that the home addresses, telephone numbers, and photographs of current and former investigators and inspectors of DBPR; the names, home address, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from public records requirements if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This section provides for future review and repeal pursuant to the Open Government Sunset Review Act.

**Section 2** provides a public necessity statement as required by the State Constitution.

**Section 3** provides an effective date of July 1, 2012.

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<sup>22</sup> See Recommended Order in *Dept. Business and Professional Regulation v. Tony's Hair Styling*, DOAH Case No. 05-007711, where the formal hearing found the licensee guilty of interfering with an agency inspection.

<sup>23</sup> Information supplied by the Department of Business and Professional Regulation. (redacted information on file with the Regulated Industries committee).

<sup>24</sup> *Id.*

**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 or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

**Public Necessity Statement**

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

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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281344

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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

**Senate Amendment**

Delete line 226

and insert:

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

By Senator Hays

20-00550A-12

2012906\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; exempting from public record  
 4 requirements identifying information relating to  
 5 current and former investigators and inspectors of the  
 6 Department of Business and Professional Regulation and  
 7 their spouses and children; providing for future  
 8 repeal and legislative review of the exemption under  
 9 the Open Government Sunset Review Act; providing a  
 10 statement of public necessity; providing an effective  
 11 date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Subsection (4) of section 119.071, Florida  
 16 Statutes, is amended to read:  
 17 119.071 General exemptions from inspection or copying of  
 18 public records.—  
 19 (4) AGENCY PERSONNEL INFORMATION.—  
 20 (a) The social security numbers of all current and former  
 21 agency employees which numbers are held by the employing agency  
 22 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 23 I of the State Constitution. This paragraph is subject to the  
 24 Open Government Sunset Review Act in accordance with s. 119.15  
 25 and shall stand repealed on October 2, 2014, unless reviewed and  
 26 saved from repeal through reenactment by the Legislature.  
 27 (b)1. Medical information pertaining to a prospective,  
 28 current, or former officer or employee of an agency which, if  
 29 disclosed, would identify that officer or employee is exempt

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

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30 from s. 119.07(1) and s. 24(a), Art. I of the State  
 31 Constitution. However, such information may be disclosed if the  
 32 person to whom the information pertains or the person's legal  
 33 representative provides written permission or pursuant to court  
 34 order.  
 35 2.a. Personal identifying information of a dependent child  
 36 of a current or former officer or employee of an agency, which  
 37 dependent child is insured by an agency group insurance plan, is  
 38 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 39 Constitution. For purposes of this exemption, "dependent child"  
 40 has the same meaning as in s. 409.2554.  
 41 b. This exemption is remedial in nature and applies to  
 42 personal identifying information held by an agency before, on,  
 43 or after the effective date of this exemption.  
 44 c. This subparagraph is subject to the Open Government  
 45 Sunset Review Act in accordance with s. 119.15 and shall stand  
 46 repealed on October 2, 2014, unless reviewed and saved from  
 47 repeal through reenactment by the Legislature.  
 48 (c) Any information revealing undercover personnel of any  
 49 criminal justice agency is exempt from s. 119.07(1) and s.  
 50 24(a), Art. I of the State Constitution.  
 51 (d)1.a. The home addresses, telephone numbers, social  
 52 security numbers, and photographs of active or former law  
 53 enforcement personnel, including correctional and correctional  
 54 probation officers, personnel of the Department of Children and  
 55 Family Services whose duties include the investigation of abuse,  
 56 neglect, exploitation, fraud, theft, or other criminal  
 57 activities, personnel of the Department of Health whose duties  
 58 are to support the investigation of child abuse or neglect, and

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

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 59 personnel of the Department of Revenue or local governments  
 60 whose responsibilities include revenue collection and  
 61 enforcement or child support enforcement; the home addresses,  
 62 telephone numbers, social security numbers, photographs, and  
 63 places of employment of the spouses and children of such  
 64 personnel; and the names and locations of schools and day care  
 65 facilities attended by the children of such personnel are exempt  
 66 from s. 119.07(1).

67 b. The home addresses, telephone numbers, and photographs  
 68 of firefighters certified in compliance with s. 633.35; the home  
 69 addresses, telephone numbers, photographs, and places of  
 70 employment of the spouses and children of such firefighters; and  
 71 the names and locations of schools and day care facilities  
 72 attended by the children of such firefighters are exempt from s.  
 73 119.07(1).

74 c. The home addresses and telephone numbers of justices of  
 75 the Supreme Court, district court of appeal judges, circuit  
 76 court judges, and county court judges; the home addresses,  
 77 telephone numbers, and places of employment of the spouses and  
 78 children of justices and judges; and the names and locations of  
 79 schools and day care facilities attended by the children of  
 80 justices and judges are exempt from s. 119.07(1).

81 d. The home addresses, telephone numbers, social security  
 82 numbers, and photographs of current or former state attorneys,  
 83 assistant state attorneys, statewide prosecutors, or assistant  
 84 statewide prosecutors; the home addresses, telephone numbers,  
 85 social security numbers, photographs, and places of employment  
 86 of the spouses and children of current or former state  
 87 attorneys, assistant state attorneys, statewide prosecutors, or

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 88 assistant statewide prosecutors; and the names and locations of  
 89 schools and day care facilities attended by the children of  
 90 current or former state attorneys, assistant state attorneys,  
 91 statewide prosecutors, or assistant statewide prosecutors are  
 92 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 93 Constitution.

94 e. The home addresses and telephone numbers of general  
 95 magistrates, special magistrates, judges of compensation claims,  
 96 administrative law judges of the Division of Administrative  
 97 Hearings, and child support enforcement hearing officers; the  
 98 home addresses, telephone numbers, and places of employment of  
 99 the spouses and children of general magistrates, special  
 100 magistrates, judges of compensation claims, administrative law  
 101 judges of the Division of Administrative Hearings, and child  
 102 support enforcement hearing officers; and the names and  
 103 locations of schools and day care facilities attended by the  
 104 children of general magistrates, special magistrates, judges of  
 105 compensation claims, administrative law judges of the Division  
 106 of Administrative Hearings, and child support enforcement  
 107 hearing officers are exempt from s. 119.07(1) and s. 24(a), Art.  
 108 I of the State Constitution if the general magistrate, special  
 109 magistrate, judge of compensation claims, administrative law  
 110 judge of the Division of Administrative Hearings, or child  
 111 support hearing officer provides a written statement that the  
 112 general magistrate, special magistrate, judge of compensation  
 113 claims, administrative law judge of the Division of  
 114 Administrative Hearings, or child support hearing officer has  
 115 made reasonable efforts to protect such information from being  
 116 accessible through other means available to the public. This

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 117 sub-subparagraph is subject to the Open Government Sunset Review  
 118 Act in accordance with s. 119.15, and shall stand repealed on  
 119 October 2, 2013, unless reviewed and saved from repeal through  
 120 reenactment by the Legislature.

121 f. The home addresses, telephone numbers, and photographs  
 122 of current or former human resource, labor relations, or  
 123 employee relations directors, assistant directors, managers, or  
 124 assistant managers of any local government agency or water  
 125 management district whose duties include hiring and firing  
 126 employees, labor contract negotiation, administration, or other  
 127 personnel-related duties; the names, home addresses, telephone  
 128 numbers, and places of employment of the spouses and children of  
 129 such personnel; and the names and locations of schools and day  
 130 care facilities attended by the children of such personnel are  
 131 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 132 Constitution.

133 g. The home addresses, telephone numbers, and photographs  
 134 of current or former code enforcement officers; the names, home  
 135 addresses, telephone numbers, and places of employment of the  
 136 spouses and children of such personnel; and the names and  
 137 locations of schools and day care facilities attended by the  
 138 children of such personnel are exempt from s. 119.07(1) and s.  
 139 24(a), Art. I of the State Constitution.

140 h. The home addresses, telephone numbers, places of  
 141 employment, and photographs of current or former guardians ad  
 142 litem, as defined in s. 39.820; the names, home addresses,  
 143 telephone numbers, and places of employment of the spouses and  
 144 children of such persons; and the names and locations of schools  
 145 and day care facilities attended by the children of such persons

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 146 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 147 Constitution, if the guardian ad litem provides a written  
 148 statement that the guardian ad litem has made reasonable efforts  
 149 to protect such information from being accessible through other  
 150 means available to the public. This sub-subparagraph is subject  
 151 to the Open Government Sunset Review Act in accordance with s.  
 152 119.15 and shall stand repealed on October 2, 2015, unless  
 153 reviewed and saved from repeal through reenactment by the  
 154 Legislature.

155 i. The home addresses, telephone numbers, and photographs  
 156 of current or former juvenile probation officers, juvenile  
 157 probation supervisors, detention superintendents, assistant  
 158 detention superintendents, juvenile justice detention officers I  
 159 and II, juvenile justice detention officer supervisors, juvenile  
 160 justice residential officers, juvenile justice residential  
 161 officer supervisors I and II, juvenile justice counselors,  
 162 juvenile justice counselor supervisors, human services counselor  
 163 administrators, senior human services counselor administrators,  
 164 rehabilitation therapists, and social services counselors of the  
 165 Department of Juvenile Justice; the names, home addresses,  
 166 telephone numbers, and places of employment of spouses and  
 167 children of such personnel; and the names and locations of  
 168 schools and day care facilities attended by the children of such  
 169 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 170 the State Constitution.

171 j. The home addresses, telephone numbers, and photographs  
 172 of current or former public defenders, assistant public  
 173 defenders, criminal conflict and civil regional counsel, and  
 174 assistant criminal conflict and civil regional counsel; the home

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 175 addresses, telephone numbers, and places of employment of the  
 176 spouses and children of such defenders or counsel; and the names  
 177 and locations of schools and day care facilities attended by the  
 178 children of such defenders or counsel are exempt from s.  
 179 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 180 sub-subparagraph is subject to the Open Government Sunset Review  
 181 Act in accordance with s. 119.15 and shall stand repealed on  
 182 October 2, 2015, unless reviewed and saved from repeal through  
 183 reenactment by the Legislature.

184 k. The home addresses, telephone numbers, and photographs  
 185 of current and former investigators and inspectors of the  
 186 Department of Business and Professional Regulation; the names,  
 187 home addresses, telephone numbers, and places of employment of  
 188 the spouses and children of such current or former investigators  
 189 and inspectors; and the names and locations of schools and day  
 190 care facilities attended by the children of such current or  
 191 former investigators and inspectors are exempt from s. 119.07(1)  
 192 and s. 24(a), Art. I of the State Constitution if the  
 193 investigator or inspector has made reasonable efforts to protect  
 194 such information from being accessible through other means  
 195 available to the public. This sub-subparagraph is subject to the  
 196 Open Government Sunset Review Act in accordance with s. 119.15  
 197 and shall stand repealed on October 2, 2017, unless reviewed and  
 198 saved from repeal through reenactment by the Legislature.

199 2. An agency that is the custodian of the information  
 200 specified in subparagraph 1. and that is not the employer of the  
 201 officer, employee, justice, judge, or other person specified in  
 202 subparagraph 1. shall maintain the exempt status of that  
 203 information only if the officer, employee, justice, judge, other

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 204 person, or employing agency of the designated employee submits a  
 205 written request for maintenance of the exemption to the  
 206 custodial agency.

207 Section 2. The Legislature finds that it is a public  
 208 necessity that the home addresses, telephone numbers, and  
 209 photographs of current and former investigators and inspectors  
 210 of the Department of Business and Professional Regulation, the  
 211 names, home addresses, telephone numbers, and places of  
 212 employment of the spouses and children of such current or former  
 213 investigators and inspectors, and the names and locations of  
 214 schools and day care facilities attended by the children of such  
 215 current or former investigators and inspectors be made exempt  
 216 from public records requirements. The Legislature finds that the  
 217 release of such identifying and location information might place  
 218 the department's investigators and inspectors and their family  
 219 members in danger of physical and emotional harm from  
 220 disgruntled individuals whose business or professional practice  
 221 have come under the scrutiny of investigators and inspectors of  
 222 the department. The Legislature further finds that the harm that  
 223 may result from the release of such personal identifying and  
 224 location information outweighs any public benefit that may be  
 225 derived from the disclosure of the information.

226 Section 3. This act shall take effect July 1, 2012.

**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 910

**INTRODUCER:** Banking and Insurance Committee and Senators Hays and Bennett

**SUBJECT:** Public Retirement Plans

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>McKay</u>	<u>Roberts</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>BC</u>	_____
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 provides that for a firefighter or police plan established under Chapters 175 or 185, F.S., if the local government and the plan members' collective bargaining representative or, if none, a majority of the plan members agree to the retirement benefits provided in the plan or to the use from the premium tax, the provisions of the agreement are deemed to comply with the chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010. The bill also eliminates the requirement that a minimum of 300 hours of overtime must be included in the definition of "salary" for police officers plans under ch. 185, F.S.

This bill substantially amends the following sections of the Florida Statutes: 175.351, 185.02, and 185.35.

## II. Present Situation:

### Overview of State and Local Government Retirement Systems

The Division of Retirement in the Department of Management Services (DMS) is responsible for monitoring Florida's state and local government defined benefit pension plans for compliance with Florida laws. However, the local boards of trustees are responsible for overseeing these local plans on a day-to-day basis. The local government plans include local pension plans under the provisions of part VII of ch. 112, F.S., and municipal police and firefighters plans established under the provisions of chs. 175 and 185, F.S., respectively.

The Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund are administered by a local governing board of trustees, which are created in participating cities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.<sup>1</sup> The membership of the board consists of five members: two residents appointed by the governing body of the municipality or a special fire control district, two police officers or firefighters selected by the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma, who are subject to two-year terms.<sup>2</sup>

The board of trustees has the authority to invest and reinvest pension trust fund assets into annuities and life insurance contracts in amounts sufficient to provide entitled benefits and initial and subsequent premiums.<sup>3</sup> Under current law, if the trust fund is not sufficient to provide entitled benefits, the municipality pays any additional contributions necessary to maintain the actuarial soundness of the plan.<sup>4</sup>

### Actuarial Soundness and Minimum Funding Standards for Pension Plans

Article X, s. 14, of the State Constitution requires the funding of public retirement benefits on a sound actuarial basis:

SECTION 14: State retirement systems benefit changes.- A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of ch. 112, F.S., creates minimum operation and funding standards for public employee retirement plans. It is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees, which is funded in whole or in part by public funds.

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<sup>1</sup> Sections 175.061 and 185.05, F.S.

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

<sup>3</sup> Sections 175.071 and 185.06, F.S.

<sup>4</sup> Sections 175.091(1)(d) and 185.07(1)(d), F.S.; *see also* ss. 175.051 and 185.04, F.S., stating, "[f]or any municipality, chapter plan, local law municipality, or local plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state."

Pursuant to ch. 112, F.S., a local government may not change retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the Division of Retirement in the Department of Management Services.<sup>5</sup> The statement also is required to indicate whether the proposed changes comply with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

### **Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund**

#### ***Funding***

Municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.<sup>6</sup> Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax), employee contributions, other revenue sources, and mandatory payments by the city of any extra amount needed to keep the plan solvent. Most firefighters and police officers participate in these plans.

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.<sup>7</sup> These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies, and 1.00 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. The insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.<sup>8</sup>

The Firefighters' Pension Trust Fund is financed through an excise tax of 1.85 percent imposed on fire insurance companies, fire insurance associations, or other property insurers on the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance.<sup>9</sup> This excise tax is imposed on the policies located within the municipality or special fire control district. It is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.<sup>10</sup>

The Police Officers' Retirement Trust Fund is financed through an excise tax on casualty insurance policies that amount up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality.<sup>11</sup> Similar to the Firefighters' Pension Trust Fund, the excise tax is

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<sup>5</sup> Section 112.63, F.S.

<sup>6</sup> Sections 175.021(1) and 185.01(1), F.S.

<sup>7</sup> Section 624.509, F.S.

<sup>8</sup> Section 624.51055, F.S.

<sup>9</sup> Section 175.091(1), F.S.

<sup>10</sup> Section 175.121, F.S.

<sup>11</sup> Section 185.08, F.S.

payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.<sup>12</sup>

### ***Benefits***

Prior to the 1999 Legislative Session, the statutes contained different benefit levels for “chapter” and “local law” plans. With the amendments in 1999, all cities and districts receiving premium tax proceeds had to meet the same minimum chapter-plan benefit levels in order to be eligible for the state moneys.<sup>13</sup> The legislation also provided that minimum benefits could not be reduced by local charter, ordinance, resolution, or by special act of the Legislature, nor could the minimum benefits or minimum standards be reduced or offset by any other local, state, or federal law that may include firefighters or police officers in its operation, except as provided under s. 112.65, F.S.<sup>14 15</sup>

Local plans were allowed to continue to use the amount of premium tax proceeds for the calendar year 1997 to fund their existing benefits, but were required to enact any missing minimum benefits as the increases in state funds became available. The law also provides that local plans in effect on October 1, 1998, must comply with the minimum benefit provisions of ch. 175 or 185, F.S., only to the extent that additional premium tax revenues become available to fund incrementally the cost of such compliance. Once a plan complies with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must be used to provide extra benefits.<sup>16</sup> Sections 175.351 and 185.35, F.S., define the term “extra benefits,” to mean benefits in addition to or greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers, respectively, on March 12, 1999.<sup>17</sup>

Any benefits in place on March 12, 1999, must be provided in order to maintain compliance with ch. 175 or 185, F.S., and eligibility for premium tax revenues. According to the DMS, any benefit improvements by a local plan enacted since March 12, 1999, can be reduced, or eliminated.<sup>18</sup> Of the 346 participating plans as of September 30, 2010, 31 have still not met all the required chapter minimum benefits, and of those, 13 are police plans that have failed to satisfy the 300 hours of overtime-minimum benefit.<sup>19</sup>

### **Definition of Salary in Municipal Police Pension Plans**

In 2011, the Legislature enacted<sup>20</sup> a yearly 300 hour cap on the amount of overtime hours allowed in the calculation of retirement benefits, in ss. 112.66, 175.032, and 185.02, F.S. The provisions for general public retirement systems (Chapter 112, F.S.) and firefighter pensions (Chapter 175, F.S.) did not have existing provisions allowing any overtime hours to be included

<sup>12</sup> Section 185.10, F.S.

<sup>13</sup> Chapter 99-1, L.O.F.

<sup>14</sup> Sections 175.021(2) and 185.01(2), F.S.

<sup>15</sup> Sections 175.381 and 185.39, F.S.

<sup>16</sup> Section 175.351(2), F.S.

<sup>17</sup> Sections 175.351 and 185.02, F.S.

<sup>18</sup> Memorandum from Patricia Shoemaker, Division of Retirement of the Department of Management Services, to Randy Knight, City Manager of Winter Park, dated December 14, 2011.

<sup>19</sup> Department of Management Services SB 910 analysis, dated December 1, 2011.

<sup>20</sup> Chapter 2011-216, L.O.F.; Senate Bill 1128.

in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by SB 1128:

“Compensation” or “salary” means the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

After amendment, the section reads as follows:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

The pre-SB 1128 provision sets the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-SB 1128 language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. The DMS Division of Retirement has not yet taken final agency action on its interpretation of the provision, but at one point appeared to be taking the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 hour floor with a 300 hour cap. In other words, the employer must include at least 300 hours of overtime in the calculation, but may not include more than 300 hours. If the division deems that a firefighter or police pension plan created pursuant to Chapters 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

### III. Effect of Proposed Changes:

**Section 1** amends s. 175.351, F.S., to provide that, notwithstanding any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members mutually consent to the retirement benefits provided in the plan or to the use income for retirement benefits from premium taxes, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

**Section 2** amends s. 185.02(4), F.S., by eliminating the requirement that a minimum of 300 hours of overtime must be included in the definition of salary for police officer plans under this chapter.

**Sections 3** amends ss. 185.35, F.S., to provide that, notwithstanding any plan established under this chapter, if the municipality and the plan members' collective bargaining representative or, if none, a majority of the plan members mutually consent to the retirement benefits provided in the plan or to the use from the use of income for retirement benefits from premium taxes, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

**Section 4** provides that the bill fulfills an important state interest.

**Section 5** provides that the bill will take effect upon becoming a law.

### IV. Constitutional Issues:

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

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (section 4 of the bill) and one of the following relevant exceptions must apply:

- Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

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

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

Indeterminate.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that local governments are allowed to use premium tax revenues for more of their pension funding needs each year, there would be more revenue available to help pay these expenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The two policy issues in this bill are also addressed, differently, in CS/SB 2088, which was temporarily postponed by the Community Affairs Committee on February 13, 2012.

**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 Banking and Insurance on February 2, 2012:**

The CS made the following changes:

- Eliminates revisions to the workers' compensation presumption under s. 112.18, F.S.
- Eliminates changes relating to the use of premium tax moneys.
- Eliminates changes to definitions of terms in chs. 175 and 185, F.S.
- Removes authority of municipalities and fire districts to establish one or more new plans, or benefit levels within a plan or to transfer all of its police and firefighters into a defined contribution plan or enroll their police and firefighters in the Florida Retirement System.
- Eliminates reporting requirements.

B. Amendments:

None.

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

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By the Committee on Banking and Insurance; and Senators Hays and Bennett

597-02860-12

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A bill to be entitled

An act relating to public retirement plans; amending s. 175.351, F.S.; revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan; providing for retroactive application; amending s. 185.02, F.S.; revising the definition of the term "compensation" or "salary" for purposes of police officers' pensions; amending s. 185.35, F.S.; revising provisions relating to benefits paid by a municipality that has its own pension plan; providing for retroactive application; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (6) is added to section 175.351, Florida Statutes, to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters.—For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter, in order for municipalities and special fire control districts with their own pension plans for firefighters, or for firefighters and police officers if included, to participate in the distribution of the tax fund established pursuant to s. 175.101, local law plans must meet the minimum benefits and minimum standards set forth in this

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

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chapter.

(6) Notwithstanding any other provision, with respect to any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income for retirement benefits from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for all purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

Section 2. Subsection (4) of section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(4) The term "compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; ~~however, such overtime limit may not be less than 300~~

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

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59 ~~hours per officer per calendar year.~~ For noncollectively  
 60 bargained service earned on or after July 1, 2011, or for  
 61 service earned under collective bargaining agreements entered  
 62 into on or after July 1, 2011, the term has the same meaning  
 63 except that when calculating retirement benefits, up to 300  
 64 hours per year in overtime compensation may be included as  
 65 specified in the plan or collective bargaining agreement, but  
 66 payments for accrued unused sick or annual leave may not be  
 67 included.

68 (a) Any retirement trust fund or plan that meets the  
 69 requirements of this chapter does not, solely by virtue of this  
 70 subsection, reduce or diminish the monthly retirement income  
 71 otherwise payable to each police officer covered by the  
 72 retirement trust fund or plan.

73 (b) The member's compensation or salary contributed as  
 74 employee-elective salary reductions or deferrals to any salary  
 75 reduction, deferred compensation, or tax-sheltered annuity  
 76 program authorized under the Internal Revenue Code shall be  
 77 deemed to be the compensation or salary the member would receive  
 78 if he or she were not participating in such program and shall be  
 79 treated as compensation for retirement purposes under this  
 80 chapter.

81 (c) For any person who first becomes a member in any plan  
 82 year beginning on or after January 1, 1996, compensation for  
 83 that plan year may not include any amounts in excess of the  
 84 Internal Revenue Code s. 401(a)(17) limitation, as amended by  
 85 the Omnibus Budget Reconciliation Act of 1993, which limitation  
 86 of \$150,000 shall be adjusted as required by federal law for  
 87 qualified government plans and shall be further adjusted for

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88 changes in the cost of living in the manner provided by Internal  
 89 Revenue Code s. 401(a)(17)(B). For any person who first became a  
 90 member before the first plan year beginning on or after January  
 91 1, 1996, the limitation on compensation may not be less than the  
 92 maximum compensation amount that was allowed to be taken into  
 93 account under the plan as in effect on July 1, 1993, which  
 94 limitation shall be adjusted for changes in the cost of living  
 95 since 1989 in the manner provided by Internal Revenue Code s.  
 96 401(a)(17)(1991).

97 Section 3. Subsection (6) is added to section 185.35,  
 98 Florida Statutes, to read:

99 185.35 Municipalities having their own pension plans for  
 100 police officers.—For any municipality, chapter plan, local law  
 101 municipality, or local law plan under this chapter, in order for  
 102 municipalities with their own pension plans for police officers,  
 103 or for police officers and firefighters if included, to  
 104 participate in the distribution of the tax fund established  
 105 pursuant to s. 185.08, local law plans must meet the minimum  
 106 benefits and minimum standards set forth in this chapter:

107 (6) Notwithstanding any other provision, with respect to  
 108 any plan established under this chapter, if the municipality and  
 109 the plan members' collective bargaining representative or, if  
 110 none, a majority of plan members, mutually consent to the  
 111 retirement benefits provided in the plan or to the use of income  
 112 for retirement benefits from the premium tax provided pursuant  
 113 to this chapter, the provisions of the agreement shall be deemed  
 114 to comply with this chapter for all purposes. This subsection is  
 115 retroactive in application to any agreement entered into or  
 116 effective on or after October 1, 2010.

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117           Section 4. The Legislature finds that a proper and  
118 legitimate state purpose is served when employees and retirees  
119 of the state and its political subdivisions, and the dependents,  
120 survivors, and beneficiaries of such employees and retirees are  
121 extended the basic protections afforded by governmental  
122 retirement systems that provide fair and adequate benefits and  
123 that are managed, administered, and funded in an actuarially  
124 sound manner as required by s. 14, Art. X of the State  
125 Constitution and part VII of chapter 112, Florida Statutes.  
126 Therefore, the Legislature determines and declares that this act  
127 fulfills an important state interest.

128           Section 5. This act shall take effect upon becoming a law.

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

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1206

INTRODUCER: Commerce and Tourism Committee and Commerce and Tourism Committee and Senator Lynn

SUBJECT: OGSR/Economic Development Agencies

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Seay</u>	<u>Roberts</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

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

**I. Summary:**

Current law provides that certain business records are confidential and exempt from Florida's public records requirements when held by an economic development agency and requested to be exempt by the affected business. Examples of economic development agencies include the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), and public economic development agencies of local governments. The following information is confidential and exempt from public records requirements:

- Upon written request, information relating to a business's plans, intentions, and interests to locate, relocate, or expand its business activities in Florida.
- Trade secrets.
- Proprietary confidential business information.
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.
- Certain information pertaining to economic incentive programs.

This bill reenacts the public records exemptions, which will repeal on October 2, 2012, if this bill does not become law. The bill also reduces the time that a business's plans, intentions, and

interests in locating to Florida are exempted from public record by repealing the 12 month extension; provides that a business's plans, intentions, and interests may become public record 180 days after a final project order for an economic incentive agreement is issued, or until a date specified in the final order; and making certain wage, job, and tax information public 180 days after a final project order for an economic incentive agreement is issued, or until a date specified in the final order.

This bill substantially amends section 288.075 of the Florida Statutes.

## II. Present Situation:

### Public Records Law

The State of Florida has a long history of providing public access to governmental records. 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:

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

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

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

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

<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.

. . . 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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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

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<sup>5</sup> Section 119.011(11), 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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

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

The Act also requires consideration of 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?

### **Public Records Exemptions for Economic Development Agencies**

There has been a public records exemption in state law for records that contain information concerning the plans of a corporation to locate, relocate, or expand any of its business activities in this state since 1977.<sup>17</sup> The exemption has undergone several substantive and technical revisions over the years, and the last significant modification was in 2007, which merged specific provisions of a related public-records exemption, s. 288.1067, F.S., (2006), into s. 288.075, F.S.<sup>18</sup>

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<sup>16</sup> Section 119.15(4)(b), F.S.

<sup>17</sup> Senate Committee on Commerce and Consumer Services, Interim Project Report 2006-205: Open Government Sunset Review of s. 288.075, F.S., Economic Development Agencies (September 2005), available at [http://archive.flSenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-205cm.pdf](http://archive.flSenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-205cm.pdf) (last visited February 13, 2012).

<sup>18</sup> Chapter 2007-203, L.O.F. This law also repealed s. 288.1067, F.S. See Senate Committee on Commerce, Interim Project Report 2007-103: Review of Public Records Exemptions Relating to Economic Development Agencies (October 2006), available at [http://archive.flSenate.gov/data/Publications/2007/Senate/reports/interim\\_reports/pdf/2007-103cm.pdf](http://archive.flSenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-103cm.pdf) (last visited February 13, 2012); and House of Representatives, Government Efficiency and Accountability Council, Staff Analysis for HB 7201 (April 23, 2007), available at <http://archive.flSenate.gov/data/session/2007/House/bills/analysis/pdf/h7201.GEAC.pdf> (last visited February 13, 2012).

Currently, the exemption applies to information held by economic development agencies, including the Department of Economic Opportunity (DEO), Enterprise Florida, Inc., (EFI), Space Florida, and public economic development agencies of local governments.<sup>19</sup>

There are five distinct categories of information that are exempt from public records:

Exempted Material	Timeframe
Plans, intentions, or interests of a private company, person or individual considering locating, relocating, or expanding its business operations in Florida <sup>20</sup>	Confidential and exempt for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first  May be extended for up to an additional 12 months upon written request from the private company or individual upon a finding by the economic development agency that the entity is still actively seeking to locate, relocate, or expand in Florida
Trade secrets <sup>21</sup>	Permanent
Proprietary confidential business information <sup>22</sup>	Confidential and exempt until such time as the information becomes otherwise publically available or is no longer treated by the proprietor as confidential
Federal employer identification number, unemployment compensation account number, or Florida sales tax registration number <sup>23</sup>	Permanent
Specific sales, employee wage, and tax information related to the administration of state economic development incentives <sup>24</sup>	Exempt for a period not to exceed the duration of the incentive agreement or upon termination of the incentive agreement

Generally, “proprietary confidential business information” is business information that would cause harm to the business’s operations if disclosed and has not been previously disclosed to the public or pursuant to a court order or statutory provision. It includes information concerning

<sup>19</sup> Section 288.075(1)(a), F.S.

<sup>20</sup> Section 288.075(2), F.S.

<sup>21</sup> Section 288.075(3), F.S.

<sup>22</sup> Section 288.075(4), F.S.

<sup>23</sup> Section 288.075(5), F.S.

<sup>24</sup> Section 288.075(6), F.S.

business plans, internal auditing controls and reports, and reports of external auditors for privately held companies.<sup>25</sup>

Section 288.075(2)(c), F.S., states that a public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information related to plans, intentions, or interests until 90 days after the information is made public unless:

- The public officer or employee is acting in an official capacity;
- The agreement does not accrue to the personal benefit of such public officer or employee; and
- In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.

This section of law prevents public officers or employees from using confidential information to their personal benefit.

Any person who is an employee of an economic development agency who violates the provisions of s. 288.075, F.S., commits a second-degree misdemeanor, punishable by a maximum penalty of 60 days in jail and a \$500 fine.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 288.075, F.S., reenacting and saving the public records exemption for economic development agencies from repeal; deleting language allowing economic development agencies to extend the period of confidentiality for an additional 12 months; providing that information may become public record 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final order, 12 months after a request for confidentiality is received, or until the information is publically disclosed, whichever occurs first.

This section also provides that information related to certain wage, job, and tax information becomes public at the earlier of 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final order or if the information is otherwise disclosed. This section also specifies that tax information that is still considered confidential and exempt may be reported in the aggregate in Enterprise Florida's annual incentive report.

**Section 2** provides that this act shall take effect upon becoming a law.

### IV. Constitutional Issues:

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

None.

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<sup>25</sup> Section 288.075(1)(b), F.S.

<sup>26</sup> Section 288.075(7), F.S.

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

This bill retains an already-existing public records exemption and thus is not subject to requirement that the exemption must pass with a two-thirds vote of both houses of the Legislature. The bill complies with the requirement of article I, section 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism – January 19, 2012:**

The committee substitute (CS) changes the time that plans, intentions, and interests are exempt from public record from 90 days after the signing of an economic incentives agreement is signed to 180 days after a final project order for an economic incentive agreement is issued or until a date specified in the final order.

Additionally, the CS changes the time that information related to economic incentive programs becomes available from 90 days after the signing of an economic incentives agreement is signed to the earlier of 180 days after a final project order for an economic

incentive agreement is issued, until a date specified in the final order, or if the information is otherwise disclosed.

**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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702146

LEGISLATIVE ACTION

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

**Senate Amendment (with title amendment)**

Delete lines 72 - 97  
and insert:

(a) 1. If ~~Upon written request from~~ a private corporation,  
partnership, or person requests in writing before an economic  
incentive agreement is signed that, ~~information held by an~~  
economic development agency maintain the confidentiality of  
information concerning plans, intentions, or interests of a such  
private corporation, partnership, or person to locate, relocate,  
or expand any of its business activities in this state, the  
information is confidential and exempt from s. 119.07(1) and s.



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13 24(a), Art. I of the State Constitution. The information will  
14 remain confidential and exempt for 12 months after the date an  
15 economic development agency receives a request for  
16 confidentiality or until the information is otherwise disclosed,  
17 whichever occurs first.

18 2. ~~(b)~~ An economic development agency may extend the period  
19 of confidentiality specified in subparagraph 1. ~~paragraph (a)~~  
20 for up to an additional 12 months upon written request from the  
21 private corporation, partnership, or person who originally  
22 requested confidentiality under this section and upon a finding  
23 by the economic development agency that such private  
24 corporation, partnership, or person is still actively  
25 considering locating, relocating, or expanding its business  
26 activities in this state. Such a request for an extension in the  
27 period of confidentiality must be received prior to the  
28 expiration of any confidentiality originally provided under  
29 subparagraph 1. ~~this section.~~

30  
31 If a final project order for a signed economic development  
32 agreement is issued, then the information will remain  
33 confidential and exempt for 180 days after the final project  
34 order is issued, until a date specified in the final project  
35 order, or until the information is otherwise disclosed,  
36 whichever occurs first. However, such period of confidentiality  
37 may not extend beyond the period of confidentiality established  
38 in subparagraph 1. or subparagraph 2.

39  
40 ===== T I T L E A M E N D M E N T =====  
41 And the title is amended as follows:



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42           Delete lines 12 - 14  
43 and insert:  
44           specifying the time period during which information  
45           remains confidential and exempt when a final project  
46           order for a signed economic development agreement is  
47           issued; saving from repealing the exemption for trade

By the Committees on Commerce and Tourism; and Commerce and Tourism

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1                                   A bill to be entitled  
 2       An act relating to a review under the Open Government  
 3       Sunset Review Act; amending s. 288.075, F.S., which  
 4       provides public records exemptions for information  
 5       held by economic development agencies; saving from  
 6       repeal the exemption concerning plans, intentions, or  
 7       interests of a private corporation, partnership, or  
 8       person to locate, relocate, or expand any of its  
 9       business activities in this state; providing that the  
 10      exemption applies if a request for confidentiality is  
 11      made before an economic incentive agreement is signed;  
 12      revising the duration of the period in which  
 13      information may remain confidential and exempt from  
 14      disclosure; saving from repeal the exemption for trade  
 15      secrets; saving from repeal the exemption for  
 16      proprietary confidential business information; saving  
 17      from repeal the exemption for identification, account,  
 18      and registration numbers and sales, wage, and tax data  
 19      relating to a recipient of an economic development  
 20      incentive; providing that the taxes paid by businesses  
 21      participating in an economic incentive program may be  
 22      disclosed in the aggregate; authorizing the disclosure  
 23      of specified information relating to a business 180  
 24      days after the final project order for an economic  
 25      incentive agreement is issued, until a date specified  
 26      in the final project order, or if the information is  
 27      otherwise disclosed, whichever occurs first; removing  
 28      the scheduled repeal of the exemptions; providing an  
 29      effective date.

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

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30  
 31 Be It Enacted by the Legislature of the State of Florida:  
 32  
 33           Section 1. Section 288.075, Florida Statutes, is amended to  
 34 read:  
 35           288.075 Confidentiality of records.—  
 36           (1) DEFINITIONS.—As used in this section, the term:  
 37           (a) "Economic development agency" means:  
 38           1. The Department of Economic Opportunity;  
 39           2. Any industrial development authority created in  
 40 accordance with part III of chapter 159 or by special law;  
 41           3. Space Florida created in part II of chapter 331;  
 42           4. The public economic development agency of a county or  
 43 municipality or, if the county or municipality does not have a  
 44 public economic development agency, the county or municipal  
 45 officers or employees assigned the duty to promote the general  
 46 business interests or industrial interests of that county or  
 47 municipality or the responsibilities related thereto;  
 48           5. Any research and development authority created in  
 49 accordance with part V of chapter 159; or  
 50           6. Any private agency, person, partnership, corporation, or  
 51 business entity when authorized by the state, a municipality, or  
 52 a county to promote the general business interests or industrial  
 53 interests of the state or that municipality or county.  
 54           (b) "Proprietary confidential business information" means  
 55 information that is owned or controlled by the corporation,  
 56 partnership, or person requesting confidentiality under this  
 57 section; that is intended to be and is treated by the  
 58 corporation, partnership, or person as private in that the

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59 disclosure of the information would cause harm to the business  
60 operations of the corporation, partnership, or person; that has  
61 not been disclosed unless disclosed pursuant to a statutory  
62 provision, an order of a court or administrative body, or a  
63 private agreement providing that the information may be released  
64 to the public; and that is information concerning:

65 1. Business plans.

66 2. Internal auditing controls and reports of internal  
67 auditors.

68 3. Reports of external auditors for privately held  
69 companies.

70 (c) "Trade secret" has the same meaning as in s. 688.002.

71 (2) PLANS, INTENTIONS, AND INTERESTS.—

72 (a) If Upon written request from a private corporation,  
73 partnership, or person requests in writing before an economic  
74 incentive agreement is signed that, information held by an  
75 economic development agency maintain the confidentiality of  
76 information concerning plans, intentions, or interests of a such  
77 private corporation, partnership, or person to locate, relocate,  
78 or expand any of its business activities in this state, the  
79 information is confidential and exempt from s. 119.07(1) and s.  
80 24(a), Art. I of the State Constitution. The information will  
81 remain confidential and exempt for 12 months after the date an  
82 economic development agency receives a request for  
83 confidentiality, for 180 days after a final project order for a  
84 signed economic incentive agreement is issued, until a date  
85 specified in the final project order, or until the information  
86 is otherwise disclosed, whichever occurs first.

87 ~~(b) An economic development agency may extend the period of~~

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88 ~~confidentiality specified in paragraph (a) for up to an~~  
89 ~~additional 12 months upon written request from the private~~  
90 ~~corporation, partnership, or person who originally requested~~  
91 ~~confidentiality under this section and upon a finding by the~~  
92 ~~economic development agency that such private corporation,~~  
93 ~~partnership, or person is still actively considering locating,~~  
94 ~~relocating, or expanding its business activities in this state.~~  
95 ~~Such a request for an extension in the period of confidentiality~~  
96 ~~must be received prior to the expiration of any confidentiality~~  
97 ~~originally provided under this section.~~

98 (b)(e) A public officer or employee may not enter into a  
99 binding agreement with any corporation, partnership, or person  
100 who has requested confidentiality of information under this  
101 subsection until 90 days after the information is made public  
102 unless:

103 1. The public officer or employee is acting in an official  
104 capacity;

105 2. The agreement does not accrue to the personal benefit of  
106 such public officer or employee; and

107 3. In the professional judgment of the officer or employee,  
108 the agreement is necessary to effectuate an economic development  
109 project.

110 (3) TRADE SECRETS.—Trade secrets held by an economic  
111 development agency are confidential and exempt from s. 119.07(1)  
112 and s. 24(a), Art. I of the State Constitution.

113 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—  
114 Proprietary confidential business information held by an  
115 economic development agency is confidential and exempt from s.  
116 119.07(1) and s. 24(a), Art. I of the State Constitution, until

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

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117 such information is otherwise publicly available or is no longer  
118 treated by the proprietor as proprietary confidential business  
119 information.

120 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A  
121 federal employer identification number, unemployment  
122 compensation account number, or Florida sales tax registration  
123 number held by an economic development agency is confidential  
124 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
125 Constitution.

126 (6) ECONOMIC INCENTIVE PROGRAMS.—

127 (a) The following information held by an economic  
128 development agency pursuant to the administration of an economic  
129 incentive program for qualified businesses is confidential and  
130 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
131 Constitution for a period not to exceed the duration of the  
132 incentive agreement, including an agreement authorizing a tax  
133 refund or tax credit, or upon termination of the incentive  
134 agreement:

135 1. The percentage of the business's sales occurring outside  
136 this state and, for businesses applying under s. 288.1045, the  
137 percentage of the business's gross receipts derived from  
138 Department of Defense contracts during the 5 years immediately  
139 preceding the date the business's application is submitted.

140 ~~2. The anticipated wages for the project jobs that the  
141 business plans to create, as reported on the application for  
142 certification.~~

143 ~~2.3. The average wage actually paid by the business for  
144 these jobs created by the project or An individual employee's  
145 personal identifying information that ~~which~~ is held as evidence~~

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146 of the achievement or nonachievement of the wage requirements of  
147 the tax refund, tax credit, or incentive agreement programs or  
148 of the job creation requirements of such programs.

149 ~~3.4.~~ The amount of:

- 150 a. Taxes on sales, use, and other transactions paid  
151 pursuant to chapter 212;  
152 b. Corporate income taxes paid pursuant to chapter 220;  
153 c. Intangible personal property taxes paid pursuant to  
154 chapter 199;  
155 d. Insurance premium taxes paid pursuant to chapter 624;  
156 e. Excise taxes paid on documents pursuant to chapter 201;  
157 f. Ad valorem taxes paid, as defined in s. 220.03(1); or  
158 g. State communications services taxes paid pursuant to  
159 chapter 202.

160  
161 However, an economic development agency may disclose in the  
162 annual incentives report required under s. 288.907 the aggregate  
163 amount of each tax identified in this subparagraph and paid by  
164 all businesses participating in each economic incentive program.

165 (b)1. The following information held by an economic  
166 development agency relating to a specific business participating  
167 in an economic incentive program is not confidential or exempt  
168 from disclosure 180 days after a final project order for an  
169 economic incentive agreement is issued, until a date specified  
170 in the final project order, or if the information is otherwise  
171 disclosed, whichever occurs first ~~An economic development agency~~  
172 ~~may release:~~

- 173 a. The name ~~names~~ of the qualified business ~~businesses~~.  
174 b. The total number of jobs the each business committed

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

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175 ~~expects~~ to create or retain.

176 c. The total number of jobs created or retained by the each  
177 business.

178 d. Notwithstanding s. 213.053(2), the amount of tax  
179 refunds, tax credits, or incentives awarded to, ~~and~~ claimed by,  
180 or, if applicable, refunded to the state by the each business.

181 e. The anticipated total annual wages of employees the  
182 business committed to hire or retain.

183 2. For a business applying for certification under s.  
184 288.1045 which is based on obtaining a new Department of Defense  
185 contract, the total number of jobs expected and the amount of  
186 tax refunds claimed may not be released until the new Department  
187 of Defense contract is awarded.

188 ~~(e) An economic development agency may publish statistics~~  
189 ~~in the aggregate and classified so as to prevent the~~  
190 ~~identification of a single qualified applicant.~~

191 (7) PENALTIES.—Any person who is an employee of an economic  
192 development agency who violates the provisions of this section  
193 commits a misdemeanor of the second degree, punishable as  
194 provided in s. 775.082 or s. 775.083.

195 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS. This section is~~  
196 ~~subject to the Open Government Sunset Review Act in accordance~~  
197 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~  
198 ~~unless reviewed and saved from repeal through reenactment by the~~  
199 ~~Legislature.~~

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

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 1208

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Unclaimed Property/Department of Financial Services

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Seay</u>	<u>Roberts</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review of the public records exemption for social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Property identifiers could include bank account numbers, credit card numbers, or insurance policy numbers.

This bill removes the scheduled repeal date of October 2, 2012, for this exemption. The bill expands the current public records exemption by removing language allowing social security numbers to be released to a person registered under Chapter 717, F.S. with DFS who is an attorney, Florida-certified public accountant, private investigator duly licensed in Florida, or a private investigative agency licensed under Chapter 493, F.S., for the limited purpose of locating owners of abandoned or unclaimed property. As this bill expands the current exemption, it is subject to the Open Government Sunset Review Act and will expire on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

This bill substantially amends section 717.117 of the Florida Statutes.

## II. Present Situation:

### Public Records Law

The State of Florida has a long history of providing public access to governmental records. 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:

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

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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,

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

<sup>2</sup> Article I, s. 24, Fla. Constitution.

<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.

<sup>5</sup> Section 119.011(11), F.S.

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;

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<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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires consideration of 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?

### **Public Records Exemption in Section 717.117(8), F.S.**

The Department of Financial Services (DFS) Bureau of Unclaimed Property (Bureau) administers the Florida Disposition of Unclaimed Property Act (Ch. 717, F.S.), which establishes the statutory procedure for the reversion and disposition of presumed abandoned, real or personal, property to the state. Under s. 717.119, F.S., the holders, including banks and insurance companies, of property that has not been claimed for a certain period of time are required to submit the unclaimed property to DFS. The proceeds from property that remains unclaimed is then deposited into the Department of Education School Trust Fund, except for \$15 million that is retained in a separate account for the prompt payment of verified claims.<sup>17</sup> The Bureau utilizes multiple means to fulfill the state's obligation under s. 717.118, F.S., to notify owners of unclaimed property accounts valued over \$250 in a cost-effective manner.

Section 717.1400, F.S., mandates attorneys, public accountants, private investigators, or private investigative agencies to be certified or licensed within Florida in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS. A claimant's representative will attempt to locate the owner of unclaimed property and, through a power-of-attorney agreement, offer assistance in recovering the property in exchange for a fee. In order to identify the owner of unclaimed property, claimants' representatives will utilize the information contained in the unclaimed property reports filed with the Bureau.

Under the exemption in s. 717.117(8)(b), F.S., social security numbers and property identifiers contained in unclaimed property reports are confidential and exempt from public disclosure. In 2007, legislation was enacted that replaced the phrase "financial account numbers" with "property identifiers," defined as a "descriptor used by the holder to identify the unclaimed

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<sup>16</sup> Section 119.15(4)(b), F.S.

<sup>17</sup> Section 717.123, F.S.

property.”<sup>18</sup> Property identifiers contained within property reports could include bank account numbers, credit card numbers, or insurance policy numbers. The parties affected by this exemption include owners of unclaimed property, registered claimants’ representatives, and other non-registered third parties. The purpose of the exemption is to protect owners of unclaimed property from identity theft and related crimes.

Section 717.117(8)(c), F.S., allows the disclosure of property reports, containing social security numbers of unclaimed property owners along with descriptions of the property, for the limited purpose of locating the owners. The property reports can be obtained by registered claimants’ representatives from the Bureau’s website or compact discs produced by the Bureau. Representatives of the Bureau indicate that social security numbers and property identifiers utilized within the unclaimed property reports are not readily available through other means. However, access to an individual’s social security number can result in exploitation of that individual’s financial, educational, medical, or familial records or forgery of documents.

The general exemption in s. 119.071, F.S., applies to each state agency and exempts from public records social security numbers, bank account numbers, debit or charge card numbers, and credit card numbers. The exemption in s. 717.117(8), F.S., for social security numbers contained in unclaimed property reports is meant to be stronger than the general exemption, since the reports are only released to registered claimants’ representatives for the sole purpose of locating the owners of the unclaimed property. However, there have been reports that unregistered persons have received the Bureau’s compact discs containing the social security numbers of unclaimed property owners, which are often listed as a Federal Employee Identification Number. This poses a significant threat to the personal and financial information of unclaimed property owners.

### **Banking and Insurance Committee’s Open Government Sunset Review**

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Banking and Insurance Committee recommended that the Legislature retain the public records exemption established in s. 717.117(8), F.S., which makes social security numbers and property identifiers contained in unclaimed property reports confidential and exempt from public disclosure.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the confidential nature of social security numbers and property identifiers contained in unclaimed property reports. Additionally, the Sunset Review offered findings that the public records exemption be expanded due to unregistered persons’ access to the social security numbers of unclaimed property owners. Section 717.117(8)(c) currently restricts the release of social security numbers to persons registered with DFS as an attorney, a Florida-certified public accountant, private investigator, or a private investigative agency. Due to the risk of unclaimed property being fraudulently obtained and identity theft, the requisite public necessity exists to expand the public records exemption.

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<sup>18</sup> Section 717.117(8)(a), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 717.117, F.S., saving from repeal the public records exemption for social security numbers and other property identifiers in unclaimed property reports held by the Department of Financial Services; expanding the public records exemption to provide that *all* social security numbers and other property identifiers in unclaimed property reports are confidential and exempt; subjecting the expanded public records exemption to the Open Government Sunset Review Act.

**Section 2** provides a public necessity statement as required by the State Constitution. It provides that expanding the public records exemption serves a public necessity as it guards against identity theft and unclaimed property being fraudulently obtained.

**Section 3** provides an effective date of October 1, 2012.

### 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 or expanded public records or public meetings exemption. Because this bill expands a public records exemption, it requires a two-thirds vote for passage.

##### **Public Necessity Statement**

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

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

The exemption will protect individuals from potential identity theft, prevent fraudulent claims of unclaimed property, and other misuses of social security numbers and property identifiers related to personal finances and other private information.

Registered claimants' representatives' ability to locate owners may be impacted by no longer providing them with the social security numbers of those individuals who have unclaimed or abandoned property.

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.



814418

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 24 - 36  
and insert:

(a)~~(e)~~ The first five digits of social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, a Florida-certified public accountant, a private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.

(b)~~(d)~~ This exemption applies to social security numbers



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13 and property identifiers held by the department before, on, or  
14 after the effective date of this exemption.

15 (c) As used in this subsection, the term "property  
16 identifier" means the descriptor used by the holder to identify  
17 the unclaimed property.

18 (d)~~(e)~~ This subsection is subject to the Open Government  
19

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

21 And the title is amended as follows:

22 Delete line 7

23 and insert:

24 law; allowing the release of the first five digits of  
25 the number for certain purposes; providing for future  
26 legislative review and

By the Committee on Banking and Insurance

597-01561A-12

20121208\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 717.117, F.S.; revising the public records exemption  
 4 for information held by the Department of Financial  
 5 Services relating to unclaimed property to permanently  
 6 exempt social security numbers from the public records  
 7 law; providing for future legislative review and  
 8 repeal of the exemption under the Open Government  
 9 Sunset Review Act; providing a statement of public  
 10 necessity; providing an effective date.

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

13  
 14 Section 1. Subsection (8) of section 717.117, Florida  
 15 Statutes, is amended to read:

16 717.117 Report of unclaimed property.—

17 (8) ~~(a) As used in this subsection, the term "property~~  
 18 ~~identifier" means the descriptor used by the holder to identify~~  
 19 ~~the unclaimed property.~~

20 ~~(b) Social security numbers and property identifiers~~  
 21 ~~contained in reports required under this section, held by the~~  
 22 ~~department, are confidential and exempt from s. 119.07(1) and s.~~  
 23 ~~24(a), Art. I of the State Constitution.~~

24 ~~(c) Social security numbers shall be released, for the~~  
 25 ~~limited purpose of locating owners of abandoned or unclaimed~~  
 26 ~~property, to a person registered with the department under this~~  
 27 ~~chapter who is an attorney, Florida-certified public accountant,~~  
 28 ~~private investigator who is duly licensed in this state, or a~~  
 29 ~~private investigative agency licensed under chapter 493.~~

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30 ~~(a)-(d)~~ This exemption applies to social security numbers  
 31 and property identifiers held by the department before, on, or  
 32 after the effective date of this exemption.

33 (b) As used in this subsection, the term "property  
 34 identifier" means the descriptor used by the holder to identify  
 35 the unclaimed property.

36 (c)-(e) This subsection is subject to the Open Government  
 37 Sunset Review Act in accordance with s. 119.15, and shall stand  
 38 repealed October 2, 2017 ~~2012~~, unless reviewed and saved from  
 39 repeal through reenactment by the Legislature.

40 Section 2. The Legislature finds that it is a public  
 41 necessity that social security numbers contained in reports of  
 42 unclaimed property remain confidential and exempt from public  
 43 records requirements. Social security numbers, which are used by  
 44 a holder of unclaimed property to identify such property, could  
 45 be used to fraudulently obtain unclaimed property. The release  
 46 of social security numbers could also place owners of unclaimed  
 47 property at risk of identity theft. Therefore, the protection of  
 48 social security numbers is a public necessity in order to  
 49 prevent the fraudulent use of such information by creating  
 50 falsified or forged documents that appear to demonstrate  
 51 entitlement to unclaimed property and to prevent opportunities  
 52 for identify theft. Such use defrauds the rightful owner or the  
 53 State School Fund, which is the depository for all remaining  
 54 unclaimed funds.

55 Section 3. This act shall take effect October 1, 2012.

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

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

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

**BILL:** PCS/SB 1230 (888594)

**INTRODUCER:** Governmental Oversight and Accountability Committee

**SUBJECT:** OGSR/Public Records/Consumer Complaints and Inquiries

**DATE:** February 14, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Favorable</b>
2.	Seay	Roberts	GO	<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 proposed committee substitute is the result of the Banking and Insurance Committee’s Open Government Sunset Review of the public records exemption for personal financial and health information held by the Department of Financial Services or the Office of Insurance Regulation, relating to a consumer’s complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. This exemption will repeal on October 2, 2012, unless reviewed and saved from repeal by the Legislature. This bill reenacts the public records exemption. The PCS also makes editorial changes and allows the protected information to be released to the consumer or the consumer’s legally authorized representative or a person or entity with the express written consent of the consumer or the consumer’s legally authorized representative.

This bill substantially amends section 624.23 of the Florida Statutes.

## II. Present Situation:

### Public Records Law

The State of Florida has a long history of providing public access to governmental records. 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:

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

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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>

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

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

<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.

<sup>5</sup> Section 119.011(11), F.S.

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;

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<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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires consideration of 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?

### **Consumer Inquiries and Complaints**

Consumers may file complaints with or make inquiries to the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) concerning an insurance company or other entity regulated by DFS or OIR under the Florida Insurance Code. The Division of Consumer Services of the Department of Financial Services primarily is responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.<sup>17</sup>

According to DFS, when the department investigates the activities of insurance companies or other regulated entities, policyholders may provide the department with personal information relating to their insurance policies that often includes financial or medical information. Consumers also may contact DFS about problems they have in obtaining insurance coverage, and, as such, might submit medical or financial records. Often, a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services. In providing background information relating to the claim, the insured may provide medical records detailing the history of the claim, such as medical records revealing health information supporting why the claim should be paid.

### **Workers' Compensation**

The Division of Workers' Compensation of DFS is responsible for providing information and assistance to injured workers, employers, carriers, health care providers, and managed care arrangements.<sup>18</sup> The Employee Assistance and Ombudsman Office of the Division of Workers' Compensation is charged with the responsibility of facilitating and resolving disputes between an

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<sup>16</sup> Section 119.15(4)(b), F.S.

<sup>17</sup> See s. 20.121(2)(h), F.S.

<sup>18</sup> See chapter 440, F.S.

employee and the employer or carrier.<sup>19</sup> Frequently, an employee will submit personal financial and medical information to support a claim for benefits or other documentation to assist in the resolution process.

### **Public Records Exemption Under Review**

In 2007, the Legislature reenacted and expanded the public records exemption for certain information regarding a consumer complaint.<sup>20</sup> Personal financial and health information<sup>21</sup> held by DFS or OIR, relating to a consumer's<sup>22</sup> complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S., is confidential and exempt from public records requirements. Current law provides for retroactive application<sup>23</sup> of the exemption.<sup>24</sup>

Such confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and to the National Association of Insurance Commissioners.<sup>25</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>26</sup>

### **Banking and Insurance Committee's Open Government Sunset Review**

Based on an Open Government Sunset Review of the exemption, Senate professional staff of the Banking and Insurance Committee recommended that the Legislature retain the public records exemption in s. 624.23, F.S. This recommendation was made in light of the information gathered for the Sunset Review, which indicated that the requisite public necessity continues to exist in maintaining the exemption. The review found that the exemption is necessary for the effective

<sup>19</sup> See s. 440.191, F.S.

<sup>20</sup> Chapter 2007-70, L.O.F.

<sup>21</sup> Section 624.23(1)(b), F.S., defines "personal financial and health information" to mean:

- A consumer's personal health condition, disease, or injury;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

<sup>22</sup> Section 624.23(1)(a), F.S., defines "consumer" to mean a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer; or an employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

<sup>23</sup> The State Supreme Court has ruled that a public record 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).

<sup>24</sup> Section 624.23(2), F.S.

<sup>25</sup> Section 624.23(3), F.S.

<sup>26</sup> Section 624.23(4), F.S.

and efficient protection of personal financial and health information against identity theft and other misuse.

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

**Section 1** amends s. 624.23, F.S., reenacting and saving from repeal the public records exemption for a consumer's personal financial and health information held by the Department of Financial Services or the Office of Insurance Regulation. This section also makes editorial changes and allows that the protected information may be disclosed to the consumer or the consumer's legally authorized representative or with the express written consent of the consumer or the consumer's legally authorized representative.

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

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

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

None.

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

This bill retains an already-existing public records exemption and thus is not subject to requirement that the exemption must pass with a two-thirds vote of both houses of the Legislature. The bill complies with the requirement of article I, section 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

#### C. Trust Funds Restrictions:

None.

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

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

#### C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**PCS (888594) by Governmental Oversight and Accountability – February 17, 2012**

The PCS makes editorial changes and also allows the protected information to be released to the consumer or the consumer’s legally authorized representative or to a person or entity with the express written consent of the consumer or the consumer’s legally authorized representative.

- B. **Amendments:**

None.



585-03309A-12

Proposed Committee Substitute by the Committee on Governmental  
Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government  
Sunset Review Act; amending s. 624.23, F.S., which  
provides a public records exemption for certain  
records relating to consumer complaints and inquiries  
regarding matters or activities regulated under the  
Florida Insurance Code or the Employee Assistance and  
Ombudsman Office within the Department of Financial  
Services; reorganizing the definition of "consumer";  
providing exceptions to the exemption; eliminating the  
scheduled repeal of the exemption under the Open  
Government Sunset Review Act; providing an effective  
date.

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

Section 1. Section 624.23, Florida Statutes, is amended to  
read:

624.23 Public records exemption.—

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

(a) "Consumer" means:

1. A prospective purchaser, purchaser, or beneficiary of,  
or applicant for, any product or service regulated under the  
Florida Insurance Code, and a family member or dependent of a  
consumer.

2. An employee seeking assistance from the Employee  
Assistance and Ombudsman Office under s. 440.191.



585-03309A-12

(b) "Personal financial and health information" means:  
1. A consumer's personal health condition, disease, or  
injury;

2. A history of a consumer's personal medical diagnosis or  
treatment;

~~3.2-~~ The existence, nature, source, or amount of a  
consumer's personal income or expenses;

~~4.3-~~ Records of or relating to a consumer's personal  
financial transactions of any kind;

~~5.4-~~ The existence, identification, nature, or value of a  
consumer's assets, liabilities, or net worth;

~~5. A history of a consumer's personal medical diagnosis or  
treatment;~~

6. The existence or content of, or any individual coverage  
or status under a consumer's beneficial interest in, any  
insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a  
consumer's interest in any insurance policy, annuity contract,  
or trust.

(2) Personal financial and health information held by the  
department or office relating to a consumer's complaint or  
inquiry regarding a matter or activity regulated under the  
Florida Insurance Code or s. 440.191 are confidential and exempt  
from s. 119.07(1) and s. 24(a), Art. I of the State  
Constitution. This exemption applies to personal financial and  
health information held by the department or office before, on,  
or after the effective date of this exemption.

(3) Such confidential and exempt information may be  
disclosed to:



888594

585-03309A-12

57 (a) Another governmental entity, if disclosure is necessary  
58 for the receiving entity to perform its duties and  
59 responsibilities, ~~and~~

60 (b) The National Association of Insurance Commissioners.

61 (c) The consumer or the consumer's legally authorized  
62 representative.

63 (d) A person or entity that has the express written consent  
64 of the consumer or the consumer's legally authorized  
65 representative.

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

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

**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 1230

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Consumer Complaints and Inquiries/Department of Financial Services

DATE: February 10, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review of the public records exemption for personal financial and health information held by the Department of Financial Services or the Office of Insurance Regulation, relating to a consumer’s complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. This exemption will repeal on October 2, 2012, unless reviewed and saved from repeal by the Legislature. This bill reenacts the public records exemption.

This bill substantially amends section 624.23 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. 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:

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,

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

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

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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>

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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.

<sup>5</sup> Section 119.011(11), 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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

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

The Act also requires consideration of 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?

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<sup>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

<sup>16</sup> Section 119.15(4)(b), F.S.

- 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?

### **Consumer Inquiries and Complaints**

Consumers may file complaints with or make inquiries to the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) concerning an insurance company or other entity regulated by DFS or OIR under the Florida Insurance Code. The Division of Consumer Services of the Department of Financial Services primarily is responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.<sup>17</sup>

According to DFS, when the department investigates the activities of insurance companies or other regulated entities, policyholders may provide the department with personal information relating to their insurance policies that often includes financial or medical information. Consumers also may contact DFS about problems they have in obtaining insurance coverage, and, as such, might submit medical or financial records. Often, a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services. In providing background information relating to the claim, the insured may provide medical records detailing the history of the claim, such as medical records revealing health information supporting why the claim should be paid.

### **Workers' Compensation**

The Division of Workers' Compensation of DFS is responsible for providing information and assistance to injured workers, employers, carriers, health care providers, and managed care arrangements.<sup>18</sup> The Employee Assistance and Ombudsman Office of the Division of Workers' Compensation is charged with the responsibility of facilitating and resolving disputes between an employee and the employer or carrier.<sup>19</sup> Frequently, an employee will submit personal financial and medical information to support a claim for benefits or other documentation to assist in the resolution process.

### **Public Records Exemption Under Review**

In 2007, the Legislature reenacted and expanded the public records exemption for certain information regarding a consumer complaint.<sup>20</sup> Personal financial and health information<sup>21</sup> held

<sup>17</sup> See s. 20.121(2)(h), F.S.

<sup>18</sup> See chapter 440, F.S.

<sup>19</sup> See s. 440.191, F.S.

<sup>20</sup> Chapter 2007-70, L.O.F.

<sup>21</sup> Section 624.23(1)(b), F.S., defines "personal financial and health information" to mean:

- A consumer's personal health condition, disease, or injury;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;

by DFS or OIR, relating to a consumer's<sup>22</sup> complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S., is confidential and exempt from public records requirements. Current law provides for retroactive application<sup>23</sup> of the exemption.<sup>24</sup>

Such confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and to the National Association of Insurance Commissioners.<sup>25</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>26</sup>

### **Banking and Insurance Committee's Open Government Sunset Review**

Based on an Open Government Sunset Review of the exemption, Senate professional staff of the Banking and Insurance Committee recommended that the Legislature retain the public records exemption in s. 624.23, F.S. This recommendation was made in light of the information gathered for the Sunset Review, which indicated that the requisite public necessity continues to exist in maintaining the exemption. The review found that the exemption is necessary for the effective and efficient protection of personal financial and health information against identity theft and other misuse.

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

**Section 1** amends s. 624.23, F.S., reenacting and saving from repeal the public records exemption for a consumer's personal financial and health information held by the Department of Financial Services or the Office of Insurance Regulation.

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

- 
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
  - A history of a consumer's personal medical diagnosis or treatment;
  - The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or
  - The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

<sup>22</sup> Section 624.23(1)(a), F.S., defines "consumer" to mean a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer; or an employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

<sup>23</sup> The State Supreme Court has ruled that a public record 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).

<sup>24</sup> Section 624.23(2), F.S.

<sup>25</sup> Section 624.23(3), F.S.

<sup>26</sup> Section 624.23(4), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

This bill retains an already-existing public records exemption and thus is not subject to requirement that the exemption must pass with a two-thirds vote of both houses of the Legislature. The bill complies with the requirement of article I, section 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

None.

## B. Amendments:

None.

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

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By the Committee on Banking and Insurance

597-01560A-12

20121230\_\_

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 624.23, F.S., relating  
 4 to a public records exemption for certain records from  
 5 consumer complaints and inquiries regarding matters or  
 6 activities regulated under the Florida Insurance Code  
 7 or Workers' Compensation Employee Assistance and  
 8 Ombudsman Office; saving the exemption from repeal  
 9 under the Open Government Sunset Review Act; deleting  
 10 a provision providing for the repeal of the exemption;  
 11 providing an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Section 624.23, Florida Statutes, is amended to  
 16 read:  
 17 624.23 Public records exemption.—  
 18 (1) As used in this section, the term:  
 19 (a) "Consumer" means:  
 20 1. A prospective purchaser, purchaser, or beneficiary of,  
 21 or applicant for, any product or service regulated under the  
 22 Florida Insurance Code, and a family member or dependent of a  
 23 consumer.  
 24 2. An employee seeking assistance from the Employee  
 25 Assistance and Ombudsman Office under s. 440.191.  
 26 (b) "Personal financial and health information" means:  
 27 1. A consumer's personal health condition, disease, or  
 28 injury;  
 29 2. The existence, nature, source, or amount of a consumer's

Page 1 of 3

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

597-01560A-12

20121230\_\_

30 personal income or expenses;  
 31 3. Records of or relating to a consumer's personal  
 32 financial transactions of any kind;  
 33 4. The existence, identification, nature, or value of a  
 34 consumer's assets, liabilities, or net worth;  
 35 5. A history of a consumer's personal medical diagnosis or  
 36 treatment;  
 37 6. The existence or content or any individual coverage or  
 38 status under a consumer's beneficial interest in any insurance  
 39 policy or annuity contract; or  
 40 7. The existence, identification, nature, or value of a  
 41 consumer's interest in any insurance policy, annuity contract,  
 42 or trust.  
 43 (2) Personal financial and health information held by the  
 44 department or office relating to a consumer's complaint or  
 45 inquiry regarding a matter or activity regulated under the  
 46 Florida Insurance Code or s. 440.191 are confidential and exempt  
 47 from s. 119.07(1) and s. 24(a), Art. I of the State  
 48 Constitution. This exemption applies to personal financial and  
 49 health information held by the department or office before, on,  
 50 or after the effective date of this exemption.  
 51 (3) Such confidential and exempt information may be  
 52 disclosed to:  
 53 (a) Another governmental entity, if disclosure is necessary  
 54 for the receiving entity to perform its duties and  
 55 responsibilities; and  
 56 (b) The National Association of Insurance Commissioners.  
 57 ~~(4) This section is subject to the Open Government Sunset~~  
 58 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~

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

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59 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
60 ~~through reenactment by the Legislature.~~

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

**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 1232

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Personal Identifying Information in Personal Injury Protection & Property  
Damage Liability Insurance Policies

DATE: February 9, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review of the public records exemption for personal identifying information and insurance policy numbers contained in personal injury protection (PIP) and property damage liability insurance policies. This exemption is set to repeal on October 2, 2012, unless reviewed and saved from repeal by the Legislature. This bill reenacts the public records exemption.

This bill substantially amends section 324.242 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. 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:

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

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

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

with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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

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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.

<sup>5</sup> Section 119.011(11), 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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

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

The Act also requires consideration of the following:

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<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

<sup>16</sup> Section 119.15(4)(b), F.S.

- 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?

### **No-Fault Motor Vehicle Insurance**

Under a non-fault insurance system, medical and other benefits are provided without regard to Fault in return for limitations on lawsuits for non-economic damages.

In Special Session C of 2007, the Legislature passed CS/HB 13C, which revived and reenacted the Florida Motor Vehicle No-Fault Law (No-Fault Law), effective January 1, 2008.<sup>17</sup> The No-Fault Law requires every owner and registrant of a motor vehicle that is required to be licensed and registered in Florida to maintain \$10,000 worth of first-party insurance known as personal injury protection,<sup>18</sup> and \$10,000 worth of property damage liability coverage.<sup>19</sup>

Insurers must notify the named insured, in writing, that a cancellation or nonrenewal of the required policies will be reported to the Department of Highway Safety and Motor Vehicles (DHSMV), and that failure to maintain such coverage will result in the loss of registration and driving privileges in this state. Also, the notification must include the amount of the reinstatement fees. The insurer, however, is not civilly liable for failing to provide notice.<sup>20</sup>

To ensure compliance with the No-Fault Law, every insurer issuing either of the required policies must report information regarding renewal, cancellation, or nonrenewal to DHSMV within 45 days of the effective date or within 30 days of the issuance of a new policy. The failure of an insurer to file the proper reports to DHSMV constitutes a violation of the Florida Insurance Code.<sup>21</sup>

### **Public Records Exemption Under Review**

Current law provides that personal identifying information of an insured or former insured and an insurance policy number, regarding personal injury protection and property damage liability insurance policies, held by DHSMV is confidential and exempt from public records requirements. Upon receipt of a written request and a copy of a crash report, DHSMV must release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

- Any person involved in the accident;
- The attorney of any person involved in the accident; or

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<sup>17</sup> Chapter 2007-324, L.O.F.

<sup>18</sup> See ss. 627.733 and 627.736, F.S.

<sup>19</sup> Section 324.022, F.S.

<sup>20</sup> See s. 324.0221(1)(b), F.S.

<sup>21</sup> See s. 324.0221(1)(a), F.S.

- A representative of the insurer of any person involved in the accident.<sup>22</sup>

The law provides for retroactive application of the public record exemption.<sup>23</sup>

### **Banking and Insurance Committee's Open Government Sunset Review**

Based on an Open Government Sunset Review of the exemption, Senate professional staff of the Banking and Insurance Committee recommended that the Legislature retain the public records exemption in s. 324.242, F.S. This recommendation was made in light of the information gathered for the Sunset Review, which indicated that a public necessity continues to exist in maintaining the exemption. The review found that the public records exemption continues to benefit policyholders by preventing the disclosure of personal identifying information paired with driver's license numbers, which could potentially be used for identity theft. The public records exemption also benefits insurers by preventing disclosure of information that would essentially allow competitors access to trade secret information that details each individual insurer's book of business.

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

**Section 1** amends s. 324.242, F.S., reenacting and saving from repeal the public records exemption for the Florida Motor Vehicle No-Fault Law.

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

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

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

None.

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

This bill retains an already-existing public records exemption and thus is not subject to requirement that the exemption must pass with a two-thirds vote of both houses of the Legislature. The bill complies with the requirement of article I, section 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

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

None.

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<sup>22</sup> Section 324.242(2), F.S.

<sup>23</sup> Section 324.242(3), 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.

By the Committee on Banking and Insurance

597-01559A-12

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1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 324.242, F.S., relating  
 4 to a public records exemption for personal identifying  
 5 information and policy numbers in personal injury  
 6 protection and property damage liability insurance  
 7 policies; saving the exemption from repeal under the  
 8 Open Government Sunset Review Act; deleting a  
 9 provision providing for the repeal of the exemption;  
 10 providing an effective date.

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

13  
 14 Section 1. Section 324.242, Florida Statutes, is amended to  
 15 read:

16 324.242 Personal injury protection and property damage  
 17 liability insurance policies; public records exemption.-

18 (1) The following information regarding personal injury  
 19 protection and property damage liability insurance policies held  
 20 by the department is confidential and exempt from s. 119.07(1)  
 21 and s. 24(a), Art. I of the State Constitution:

22 (a) Personal identifying information of an insured or  
 23 former insured; and

24 (b) An insurance policy number.

25 (2) Upon receipt of a written request and a copy of a crash  
 26 report as required under s. 316.065, s. 316.066, or s. 316.068,  
 27 the department shall release the policy number for a policy  
 28 covering a vehicle involved in a motor vehicle accident to:

29 (a) Any person involved in such accident;

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30 (b) The attorney of any person involved in such accident;  
 31 or

32 (c) A representative of the insurer of any person involved  
 33 in such accident.

34 (3) This exemption applies to personal identifying  
 35 information of an insured or former insured and insurance policy  
 36 numbers held by the department before, on, or after October 11,  
 37 2007 ~~the effective date of this section.~~

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

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

Page 2 of 2

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

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 1334

INTRODUCER: Senator Oelrich

SUBJECT: Florida Retirement System

DATE: February 15, 2012      REVISED: \_\_\_\_\_

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

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**I. Summary:**

This bill makes changes to the Florida Retirement System. It changes normal retirement age for Special Risk Class members to age 55 and vested; or age 48 with 25 years of special risk service; or age 52 with 25 years of service, including special risk service and up to 4 years of military service.

The bill changes vesting in the pension plan from 8 to 10 years.

The bill changes the early retirement reduction applied to benefits for members of the Regular Class, Senior Management Service Class, or Elected Officers' Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 62. The bill also changes the early retirement reduction applied to benefits for members of the Special Risk Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 55, or 48 if the member has completed 25 years of creditable special risk service.

The bill also specifies that new members of the Florida Retirement System initially enrolled on or after July 1, 2012, will be members of the Investment Plan, with a one-year window after the month of hire to elect to participate in the Pension Plan. Members forfeit the option to participate in the Pension Plan if they do not elect to do so within the first year.

This bill amends sections 121.021, 121.091, and 121.4501 of the Florida Statutes.

## II. Present Situation:

### Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan and, in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>1</sup>

The Florida Retirement System Act<sup>2</sup> governs the FRS, which is a multi-employer, contributory plan that provides retirement income benefits to 643,746 active members, 319,689 retired members and beneficiaries, and 45,092 members of the Deferred Retirement Option Program.<sup>3</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 185 cities and 243 independent special districts that have elected to join the system.<sup>4</sup>

The membership of the FRS is divided into five membership classes:

- Regular Class<sup>5</sup> has 551,896 active members;
- Special Risk Class<sup>6</sup> has 72,675 active members;
- Special Risk Administrative Support Class<sup>7</sup> has 63 active members;
- Elected Officers' Class<sup>8</sup> has 2,014 active members; and
- Senior Management Service Class<sup>9</sup> has 7,310 active members.<sup>10</sup>

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two plan options available for participation:

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.

### *Pension Plan*

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<sup>1</sup> The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 60.

<sup>2</sup> See Chapter 121, F.S.

<sup>3</sup> The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 22.

<sup>4</sup> *Id.*, at 38.

<sup>5</sup> Regular Class members are those members who do not qualify for membership in the other classes within the FRS. See s. 121.021(12), F.S.

<sup>6</sup> Members include law enforcement officers, firefighters, correctional officers, correctional probation officers, paramedics, emergency medical technicians, certain professional health care workers within the Department of Corrections and the Department of Children and Family Services, and certain forensic employees. See s. 121.0515, F.S.

<sup>7</sup> Members are former members of the special risk class who are transferred or reassigned to an administrative support position in certain circumstances. See s. 121.0515(8), F.S.

<sup>8</sup> Membership is comprised of those participants who hold specified elective offices in either state or local government. See s. 121.052, F.S.

<sup>9</sup> Members generally are high level executive and legal staff or as specifically provided in law. See s. 121.055, F.S.

<sup>10</sup> The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 55.

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>11</sup> Investment management is handled by the State Board of Administration (SBA).

The pension plan provides retirement income expressed as a percent of final pay. The member receives a monthly benefit which begins to accrue on the first day of the month of retirement and is payable on the last day of the month for the member's lifetime.<sup>12</sup> Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus up to 500 hours of annual leave, yield the monthly annuity benefit at normal retirement.<sup>13</sup>

Current law provides that a member employed before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.<sup>14</sup> A member employed on or after July 1, 2011, vests in the pension plan after completing eight years of service.<sup>15</sup> Benefits payable under the pension plan are calculated based on years of service X accrual rate X average final compensation. For members of the pension plan enrolled before July 1, 2011, normal retirement occurs at the earlier attainment of 30 years of service or age 62.<sup>16</sup> For members enrolled on or after July 1, 2011, normal retirement occurs at the earlier attainment of 33 years of service or age 65.<sup>17</sup> For members of the Special Risk or Special Risk Administrative Support Class enrolled before July 1, 2011, normal retirement occurs at the earlier attainment of 25 years of service or age 55.<sup>18</sup> For members of the Special Risk or Special Risk Administrative Support Class enrolled on or after July 1, 2011, the normal retirement is the attainment of eight or more years of creditable service and 60 years of age, or attainment of 30 years of creditable service.<sup>19</sup>

### ***Investment Plan***

The SBA is primarily responsible for administering the investment plan.<sup>20</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>21</sup>

Benefits under the investment plan accrue in individual member accounts funded by employer and employee contributions and earnings.<sup>22</sup> Benefits are provided through employee-directed investments offered by approved investment providers.

A member is immediately vested in all employee contributions paid to the investment plan.<sup>23</sup> With respect to the employer contributions, the member vests upon the completion of one year of work.<sup>24</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct

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<sup>11</sup> Section 121.025, F.S.

<sup>12</sup> Section 121.091(1), F.S.

<sup>13</sup> See s. 121.091, F.S.

<sup>14</sup> Section 121.021(45)(a), F.S.

<sup>15</sup> Section 121.021(45)(b), F.S.

<sup>16</sup> Section 121.021(29)(a)1.a. and b., F.S.

<sup>17</sup> Section 121.021(29)(a), F.S.

<sup>18</sup> Section 121.021(29)(b)1.a. and b., F.S.

<sup>19</sup> Section 121.021(29)(b)2.a. and b., F.S.

<sup>20</sup> See s. 121.4501(8), F.S.

<sup>21</sup> Established by Article IV, s. 4(e) of the State Constitution.

<sup>22</sup> Section 121.4501(7), F.S.

<sup>23</sup> Section 121.4501(6)(a), F.S.

<sup>24</sup> Section 121.4501(6)(b), F.S.

rollover distribution, or periodic distribution.<sup>25</sup> In addition to normal benefits and death benefits, the investment plan also provides disability coverage.<sup>26</sup>

### ***Plan Selection***

Florida law provides that a new FRS enrollee automatically defaults into the pension plan if, by the last business day of the fifth month following the month of hire, the enrollee does not make an active election of a retirement plan between the pension plan or the investment plan.<sup>27</sup> If the member does not actively select a retirement plan they are defaulted to the pension plan.<sup>28</sup>

### ***Second Election Option***

Once a member completes his or her initial plan choice period, the member has a one-time second election option to switch retirement plans (pension plan to investment plan or investment plan to pension plan).<sup>29</sup> This change must be made while the member is actively working for an FRS employer. A member switching to the pension plan from the investment plan must buy-in to the pension plan using the member's account balance in the investment plan and any outside monies necessary to make the pension plan whole.<sup>30</sup>

## **Optional Retirement Plans**

### ***State University System Optional Retirement Program***

The optional retirement program for the State University System (SUSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State University System faculty, administrators, administrative professionals, and executive service personnel.<sup>31,32</sup> As of June 30, 2011, there were 16,999 SUSORP participants.<sup>33</sup>

Through this program, participants elect coverage as an alternative to membership in the traditional FRS and direct their own investments (retirement and death benefits).<sup>34</sup> Members of the SUSORP who have executed a contract may make voluntary contributions by salary reduction or deduction in an amount not to exceed the percentage amount contributed by the employer.<sup>35</sup> Current law provides that members may receive a payout of benefits funded by the member's voluntary contributions at any time within the limits of the contract between the member and the provider company.<sup>36</sup>

### ***State Community College System Optional Retirement Program***

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<sup>25</sup> See s. 121.591, F.S.

<sup>26</sup> See s. 121.4501, F.S.

<sup>27</sup> Section 121.4501(4)(a)1.a., F.S.

<sup>28</sup> Section 121.4501(4)(a)1.b., F.S.

<sup>29</sup> Section 121.4501(4)(g), F.S.

<sup>30</sup> Section 121.4501(4)(g)2., F.S.

<sup>31</sup> Section 121.35(2)(a), F.S., provides that SUSORP is available to certain instructional and research faculty, administrative and professional personnel, and the Chancellor and university presidents. Section 121.051(1)(a)2., F.S., requires faculty members at a college with faculty practice plans to participate in the optional retirement program.

<sup>32</sup> See s. 121.35, F.S.

<sup>33</sup> The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 74.

<sup>34</sup> Section 121.35(1), F.S.

<sup>35</sup> Section 121.35(4)(e), F.S.

<sup>36</sup> Section 121.35(5)(g), F.S.

The optional retirement program for the State Community College System (SCCSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State Community College employees.<sup>37</sup> Employees of public community colleges and charter technical career centers sponsored by public community colleges<sup>38</sup> who are members of the Regular Class of the FRS may, in lieu of participating in the FRS, elect to withdraw from the system and participate in the SCCSORP.<sup>39</sup>

### ***Senior Management Service Optional Annuity Program***

The Senior Management Service Optional Annuity Program (SMSOAP) is a retirement plan that is provided as an alternative to FRS membership for members of the Senior Management Service Class.<sup>40</sup> Under this optional annuity plan, eligible members may purchase retirement, death, and disability benefits.<sup>41</sup> As of June 30, 2011, there were 38 members of the SMSOAP.<sup>42</sup>

### **Changes to the FRS in 2011**

During the 2011 Session, the Legislature passed Senate Bill 2100. Senate Bill 2100 made several changes to the FRS, including the following changes:

- Required a 3 percent employee contribution for members of a state-administered retirement plan.<sup>43</sup>
- Increased the years of service required for vesting from six to eight years of creditable service for employees initially enrolled in the pension plan on or after July 1, 2011.<sup>44</sup>
- Revised the definition of "average final compensation" for members who initially enroll in the pension plan on or after July 1, 2011, to mean the average of the eight highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculating retirement benefits.<sup>45</sup>
- Reduced the interest accrual rate from 6.5 percent to 1.3 percent for members who enter the Deferred Retirement Option Program on or after July 1, 2011.<sup>46</sup>
- Increased the retirement age and years of service for members of the FRS who initially enroll on or after July 1, 2011.<sup>47</sup>

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

**Section 1** amends s. 121.021, F.S., to change the normal retirement date for Special Risk Class members initially enrolled after July 1, 2012 to:

- Age 55 and vested;

<sup>37</sup> Section 1012.875, F.S.

<sup>38</sup> See s. 1000.21(3)(a)-(bb), F.S., for a list of public community colleges and charter technical careers that are sponsored by public community colleges.

<sup>39</sup> Section 121.051(2)(c)

<sup>40</sup> Section 121.055(6)(a), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 76.

<sup>43</sup> Codified in ss. 121.71, 121.055(6)(d)1.c., 121.35(4)(a)3., and 1012.875(4)(a)2., F.S.

<sup>44</sup> Codified in s. 121.021(45)(b), F.S.

<sup>45</sup> Codified in s. 121.021(24), F.S.

<sup>46</sup> Codified in s. 121.091(13)(c)1.b., F.S.

<sup>47</sup> Codified in ss. 121.021(29)(a) and (b)2.a. and b., F.S.

- Age 48 and 25 years of special risk service; or
- Age 52 and 25 years of service, to include special risk service and up to 4 years of military service.

The bill also increases the amount of time needed to vest in the pension plan to 10 years, for those initially enrolled in the FRS on or after July 1, 2012.

**Section 2** amends s. 121.091, F.S., to change the early retirement reduction applied to benefits for members of the Regular Class, Senior Management Service Class, or Elected Officers' Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 62, instead of age 65.

The bill also changes the early retirement reduction applied to benefits for members of the Special Risk Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 55, or 48 if the member has completed 25 years of creditable special risk service, consistent with section 1 of the bill.

**Section 3** amends s. 121.4501, F.S., to require new members initially enrolled on or after July 1, 2012, to default into the Investment Plan with a one-year window after the month of hire to elect Pension Plan participation. The default election takes effect the last business day of the twelfth month following the month of hire. If a member elects Pension Plan participation, the present value of his or her retirement contributions under the Investment Plan will be transferred to the Pension Plan. Members initially enrolled on or after July 1, 2012, forfeit the option to participate in the Pension Plan if they do not elect to do so within the first year.

**Section 4** provides that the bill takes effect July 1, 2012.

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

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

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.<sup>48</sup> The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”<sup>49</sup>

Provisions in the bill that create additional benefits may require an actuarial study.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Indeterminate. Actuarial studies may be needed to determine the fiscal impact of some provisions in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>48</sup> Section 14, Art. X, Florida Constitution.

<sup>49</sup> Section 112.61, F.S.

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Oelrich

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1 A bill to be entitled  
 2 An act relating to the Florida Retirement System;  
 3 amending s. 121.021, F.S.; revising definitions of the  
 4 terms "normal retirement date" and "vested" or  
 5 "vesting"; amending s. 121.091, F.S.; revising  
 6 provisions relating to the early retirement benefit  
 7 calculation to conform to changes made by the act;  
 8 amending s. 121.4501, F.S.; requiring new employees  
 9 to, by default, be enrolled in the investment plan;  
 10 extending the period during which employees may elect  
 11 to participate in the pension plan; prohibiting  
 12 certain employees from choosing to move to the pension  
 13 plan after a certain period; providing an effective  
 14 date.

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

17  
 18 Section 1. Paragraph (b) of subsection (29) and paragraph  
 19 (b) of subsection (45) of section 121.021, Florida Statutes, are  
 20 amended, and paragraph (c) is added to subsection (45) of that  
 21 section, to read:

22 121.021 Definitions.—The following words and phrases as  
 23 used in this chapter have the respective meanings set forth  
 24 unless a different meaning is plainly required by the context:

25 (29) "Normal retirement date" means the date a member  
 26 attains normal retirement age and is vested, which is determined  
 27 as follows:

28 (b)1. If a Special Risk Class member initially enrolled  
 29 before July 1, 2011:

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

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30 a. The first day of the month the member attains age 55 and  
 31 completes the years of creditable service in the Special Risk  
 32 Class equal to or greater than the years of service required for  
 33 vesting;

34 b. The first day of the month following the date the member  
 35 completes 25 years of creditable service in the Special Risk  
 36 Class, regardless of age; or

37 c. The first day of the month following the date the member  
 38 completes 25 years of creditable service and attains age 52,  
 39 which service may include a maximum of 4 years of military  
 40 service credit if such credit is not claimed under any other  
 41 system and the remaining years are in the Special Risk Class.

42 2. If a Special Risk Class member initially enrolled on or  
 43 after July 1, 2011, but before July 1, 2012:

44 a. The first day of the month the member attains age 60 and  
 45 completes the years of creditable service in the Special Risk  
 46 Class equal to or greater than the years of service required for  
 47 vesting;

48 b. The first day of the month following the date the member  
 49 completes 30 years of creditable service in the Special Risk  
 50 Class, regardless of age; or

51 c. The first day of the month following the date the member  
 52 completes 30 years of creditable service and attains age 57,  
 53 which service may include a maximum of 4 years of military  
 54 service credit if such credit is not claimed under any other  
 55 system and the remaining years are in the Special Risk Class.

56 3. If a Special Risk Class member initially enrolled on or  
 57 after July 1, 2012:

58 a. The first day of the month the member attains age 55 and

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59 completes the years of creditable service in the Special Risk  
60 Class equal to or greater than the years of service required for  
61 vesting;

62 b. The first day of the month the member attains age 48 and  
63 completes 25 years of creditable service in the Special Risk  
64 Class; or

65 c. The first day of the month following the date the member  
66 completes 25 years of creditable service and attains age 52,  
67 which service may include a maximum of 4 years of military  
68 service credit if such credit is not claimed under any other  
69 system and the remaining years are in the Special Risk Class.

70  
71 "Normal retirement age" is attained on the "normal retirement  
72 date."

73 (45) "Vested" or "vesting" means the guarantee that a  
74 member is eligible to receive a future retirement benefit upon  
75 completion of the required years of creditable service for the  
76 employee's class of membership, even though the member may have  
77 terminated covered employment before reaching normal or early  
78 retirement date. Being vested does not entitle a member to a  
79 disability benefit. Provisions governing entitlement to  
80 disability benefits are set forth under s. 121.091(4).

81 (b) Any member initially enrolled in the Florida Retirement  
82 System on or after July 1, 2011, but before July 1, 2012, shall  
83 be vested upon completion of 8 years of creditable service.

84 (c) Any member initially enrolled in the Florida Retirement  
85 System on or after July 1, 2012, shall be vested upon completion  
86 of 10 years of creditable service.

87 Section 2. Paragraph (a) of subsection (3) of section

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88 121.091, Florida Statutes, is amended to read:

89 121.091 Benefits payable under the system.—Benefits may not  
90 be paid under this section unless the member has terminated  
91 employment as provided in s. 121.021(39) (a) or begun  
92 participation in the Deferred Retirement Option Program as  
93 provided in subsection (13), and a proper application has been  
94 filed in the manner prescribed by the department. The department  
95 may cancel an application for retirement benefits when the  
96 member or beneficiary fails to timely provide the information  
97 and documents required by this chapter and the department's  
98 rules. The department shall adopt rules establishing procedures  
99 for application for retirement benefits and for the cancellation  
100 of such application when the required information or documents  
101 are not received.

102 (3) EARLY RETIREMENT BENEFIT.—Upon retirement on his or her  
103 early retirement date, the member shall receive an immediate  
104 monthly benefit that shall begin to accrue on the first day of  
105 the month of the retirement date and be payable on the last day  
106 of that month and each month thereafter during his or her  
107 lifetime. Such benefit shall be calculated as follows:

108 (a) For a member initially enrolled:

109 1. Before July 1, 2011, the amount of each monthly payment  
110 shall be computed in the same manner as for a normal retirement  
111 benefit, in accordance with subsection (1), but shall be based  
112 on the member's average monthly compensation and creditable  
113 service as of the member's early retirement date. The benefit so  
114 computed shall be reduced by five-twelfths of 1 percent for each  
115 complete month by which the early retirement date precedes the  
116 normal retirement date of age 62 for a member of the Regular

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 117 Class, Senior Management Service Class, or the Elected Officers'  
 118 Class, and age 55 for a member of the Special Risk Class, or age  
 119 52 if a Special Risk member has completed 25 years of creditable  
 120 service in accordance with s. 121.021(29)(b)1.c.

121 2. On or after July 1, 2011, but before July 1, 2012, the  
 122 amount of each monthly payment shall be computed in the same  
 123 manner as for a normal retirement benefit, in accordance with  
 124 subsection (1), but shall be based on the member's average  
 125 monthly compensation and creditable service as of the member's  
 126 early retirement date. The benefit so computed shall be reduced  
 127 by five-twelfths of 1 percent for each complete month by which  
 128 the early retirement date precedes the normal retirement date of  
 129 age 65 for a member of the Regular Class, Senior Management  
 130 Service Class, or the Elected Officers' Class, and age 60 for a  
 131 member of the Special Risk Class, or age 57 if a Special Risk  
 132 member has completed 30 years of creditable service in  
 133 accordance with s. 121.021(29)(b)2.c.

134 3. On or after July 1, 2012, the amount of each monthly  
 135 payment shall be computed in the same manner as for a normal  
 136 retirement benefit, in accordance with subsection (1), but shall  
 137 be based on the member's average monthly compensation and  
 138 creditable service as of the member's early retirement date. The  
 139 benefit so computed shall be reduced by five-twelfths of 1  
 140 percent for each complete month by which the early retirement  
 141 date precedes the normal retirement date of age 62 for a member  
 142 of the Regular Class, Senior Management Service Class, or the  
 143 Elected Officers' Class, and age 55 for a member of the Special  
 144 Risk Class, or age 48 if a Special Risk member has completed 25  
 145 years of creditable service in accordance with s.

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 146 121.021(29)(b)3.c.  
 147 Section 3. Subsection (4) of section 121.4501, Florida  
 148 Statutes, is amended to read:  
 149 121.4501 Florida Retirement System Investment Plan.—  
 150 (4) PARTICIPATION; ENROLLMENT.—  
 151 (a)1. With respect to an eligible employee who is employed  
 152 in a regularly established position on June 1, 2002, by a state  
 153 employer:  
 154 a. Any such employee may elect to participate in the  
 155 investment plan in lieu of retaining his or her membership in  
 156 the pension plan. The election must be made in writing or by  
 157 electronic means and must be filed with the third-party  
 158 administrator by August 31, 2002, or, in the case of an active  
 159 employee who is on a leave of absence on April 1, 2002, by the  
 160 last business day of the 5th month following the month the leave  
 161 of absence concludes. This election is irrevocable, except as  
 162 provided in paragraph (g). Upon making such election, the  
 163 employee shall be enrolled as a member of the investment plan,  
 164 the employee's membership in the Florida Retirement System is  
 165 governed by the provisions of this part, and the employee's  
 166 membership in the pension plan terminates. The employee's  
 167 enrollment in the investment plan is effective the first day of  
 168 the month for which a full month's employer contribution is made  
 169 to the investment plan.  
 170 b. Any such employee who fails to elect to participate in  
 171 the investment plan within the prescribed time period is deemed  
 172 to have elected to retain membership in the pension plan, and  
 173 the employee's option to elect to participate in the investment  
 174 plan is forfeited.

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175 2. With respect to employees who become eligible to  
 176 participate in the investment plan by reason of employment in a  
 177 regularly established position with a state employer commencing  
 178 after April 1, 2002, but before July 1, 2012:

179 a. Any such employee shall, by default, be enrolled in the  
 180 pension plan at the commencement of employment, and may, by the  
 181 last business day of the 5th month following the employee's  
 182 month of hire, elect to participate in the investment plan. The  
 183 employee's election must be made in writing or by electronic  
 184 means and must be filed with the third-party administrator. The  
 185 election to participate in the investment plan is irrevocable,  
 186 except as provided in paragraph (g).

187 b. If the employee files such election within the  
 188 prescribed time period, enrollment in the investment plan is  
 189 effective on the first day of employment. The retirement  
 190 contributions paid through the month of the employee plan change  
 191 shall be transferred to the investment program, and, effective  
 192 the first day of the next month, the employer and employee must  
 193 pay the applicable contributions based on the employee  
 194 membership class in the program.

195 c. An employee who fails to elect to participate in the  
 196 investment plan within the prescribed time period is deemed to  
 197 have elected to retain membership in the pension plan, and the  
 198 employee's option to elect to participate in the investment plan  
 199 is forfeited.

200 3. With respect to employees who become eligible to  
 201 participate in the investment plan pursuant to s.  
 202 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to  
 203 participate in the investment plan in lieu of retaining his or

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204 her membership in the State Community College System Optional  
 205 Retirement Program or the State University System Optional  
 206 Retirement Program. The election must be made in writing or by  
 207 electronic means and must be filed with the third-party  
 208 administrator. This election is irrevocable, except as provided  
 209 in paragraph (g). Upon making such election, the employee shall  
 210 be enrolled as a member in the investment plan, the employee's  
 211 membership in the Florida Retirement System is governed by the  
 212 provisions of this part, and the employee's participation in the  
 213 State Community College System Optional Retirement Program or  
 214 the State University System Optional Retirement Program  
 215 terminates. The employee's enrollment in the investment plan is  
 216 effective on the first day of the month for which a full month's  
 217 employer and employee contribution is made to the investment  
 218 plan.

219 4. With respect to employees who become eligible to  
 220 participate in the investment plan by reason of employment in a  
 221 regularly established position with a state employer commencing  
 222 on or after July 1, 2012:

223 a. Any such employee shall, by default, be enrolled in the  
 224 investment plan at the commencement of employment, and may, by  
 225 the last business day of the 12th month following the employee's  
 226 month of hire, elect to participate in the pension plan. The  
 227 employee's election must be made in writing or by electronic  
 228 means and must be filed with the third-party administrator.

229 b. If the employee files such election within the  
 230 prescribed time period, enrollment in the pension plan is  
 231 effective on the first day of employment. The present value of  
 232 his or her retirement contributions under the investment plan

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 233 paid through the month of the employee plan change shall be  
 234 transferred to the pension plan, and, effective the first day of  
 235 the next month, the employer and employee must pay the  
 236 applicable contributions based on the employee membership class  
 237 in the pension plan.

238 c. An employee who fails to elect to participate in the  
 239 pension plan within the prescribed time period is deemed to have  
 240 elected to retain membership in the investment plan, and the  
 241 employee's option to elect to participate in the pension plan is  
 242 forfeited.

243 5.4. For purposes of this paragraph, "state employer" means  
 244 any agency, board, branch, commission, community college,  
 245 department, institution, institution of higher education, or  
 246 water management district of the state, which participates in  
 247 the Florida Retirement System for the benefit of certain  
 248 employees.

249 (b)1. With respect to an eligible employee who is employed  
 250 in a regularly established position on September 1, 2002, by a  
 251 district school board employer:

252 a. Any such employee may elect to participate in the  
 253 investment plan in lieu of retaining his or her membership in  
 254 the pension plan. The election must be made in writing or by  
 255 electronic means and must be filed with the third-party  
 256 administrator by November 30, or, in the case of an active  
 257 employee who is on a leave of absence on July 1, 2002, by the  
 258 last business day of the 5th month following the month the leave  
 259 of absence concludes. This election is irrevocable, except as  
 260 provided in paragraph (g). Upon making such election, the  
 261 employee shall be enrolled as a member of the investment plan,

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 262 the employee's membership in the Florida Retirement System is  
 263 governed by the provisions of this part, and the employee's  
 264 membership in the pension plan terminates. The employee's  
 265 enrollment in the investment plan is effective the first day of  
 266 the month for which a full month's employer contribution is made  
 267 to the investment program.

268 b. Any such employee who fails to elect to participate in  
 269 the investment plan within the prescribed time period is deemed  
 270 to have elected to retain membership in the pension plan, and  
 271 the employee's option to elect to participate in the investment  
 272 plan is forfeited.

273 2. With respect to employees who become eligible to  
 274 participate in the investment plan by reason of employment in a  
 275 regularly established position with a district school board  
 276 employer commencing after July 1, 2002, but before July 1, 2012:

277 a. Any such employee shall, by default, be enrolled in the  
 278 pension plan at the commencement of employment, and may, by the  
 279 last business day of the 5th month following the employee's  
 280 month of hire, elect to participate in the investment plan. The  
 281 employee's election must be made in writing or by electronic  
 282 means and must be filed with the third-party administrator. The  
 283 election to participate in the investment plan is irrevocable,  
 284 except as provided in paragraph (g).

285 b. If the employee files such election within the  
 286 prescribed time period, enrollment in the investment plan is  
 287 effective on the first day of employment. The employer  
 288 retirement contributions paid through the month of the employee  
 289 plan change shall be transferred to the investment plan, and,  
 290 effective the first day of the next month, the employer shall

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291 pay the applicable contributions based on the employee  
 292 membership class in the investment plan.

293 c. Any such employee who fails to elect to participate in  
 294 the investment plan within the prescribed time period is deemed  
 295 to have elected to retain membership in the pension plan, and  
 296 the employee's option to elect to participate in the investment  
 297 plan is forfeited.

298 3. With respect to employees who become eligible to  
 299 participate in the investment plan by reason of employment in a  
 300 regularly established position with a district school board  
 301 employer commencing on or after July 1, 2012:

302 a. Any such employee shall, by default, be enrolled in the  
 303 investment plan at the commencement of employment, and may, by  
 304 the last business day of the 12th month following the employee's  
 305 month of hire, elect to participate in the pension plan. The  
 306 employee's election must be made in writing or by electronic  
 307 means and must be filed with the third-party administrator.

308 b. If the employee files such election within the  
 309 prescribed time period, enrollment in the pension plan is  
 310 effective on the first day of employment. The present value of  
 311 his or her retirement contributions under the investment plan  
 312 paid through the month of the employee plan change shall be  
 313 transferred to the pension plan, and, effective the first day of  
 314 the next month, the employer shall pay the applicable  
 315 contributions based on the employee membership class in the  
 316 pension plan.

317 c. Any such employee who fails to elect to participate in  
 318 the pension plan within the prescribed time period is deemed to  
 319 have elected to retain membership in the investment plan, and

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320 the employee's option to elect to participate in the pension  
 321 plan is forfeited.

322 ~~4.3.~~ For purposes of this paragraph, "district school board  
 323 employer" means any district school board that participates in  
 324 the Florida Retirement System for the benefit of certain  
 325 employees, or a charter school or charter technical career  
 326 center that participates in the Florida Retirement System as  
 327 provided in s. 121.051(2)(d).

328 (c)1. With respect to an eligible employee who is employed  
 329 in a regularly established position on December 1, 2002, by a  
 330 local employer:

331 a. Any such employee may elect to participate in the  
 332 investment plan in lieu of retaining his or her membership in  
 333 the pension plan. The election must be made in writing or by  
 334 electronic means and must be filed with the third-party  
 335 administrator by February 28, 2003, or, in the case of an active  
 336 employee who is on a leave of absence on October 1, 2002, by the  
 337 last business day of the 5th month following the month the leave  
 338 of absence concludes. This election is irrevocable, except as  
 339 provided in paragraph (g). Upon making such election, the  
 340 employee shall be enrolled as a participant of the investment  
 341 plan, the employee's membership in the Florida Retirement System  
 342 is governed by the provisions of this part, and the employee's  
 343 membership in the pension plan terminates. The employee's  
 344 enrollment in the investment plan is effective the first day of  
 345 the month for which a full month's employer contribution is made  
 346 to the investment plan.

347 b. Any such employee who fails to elect to participate in  
 348 the investment plan within the prescribed time period is deemed

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 349 to have elected to retain membership in the pension plan, and  
 350 the employee's option to elect to participate in the investment  
 351 plan is forfeited.

352 2. With respect to employees who become eligible to  
 353 participate in the investment plan by reason of employment in a  
 354 regularly established position with a local employer commencing  
 355 after October 1, 2002, but before July 1, 2012:

356 a. Any such employee shall, by default, be enrolled in the  
 357 pension plan at the commencement of employment, and may, by the  
 358 last business day of the 5th month following the employee's  
 359 month of hire, elect to participate in the investment plan. The  
 360 employee's election must be made in writing or by electronic  
 361 means and must be filed with the third-party administrator. The  
 362 election to participate in the investment plan is irrevocable,  
 363 except as provided in paragraph (g).

364 b. If the employee files such election within the  
 365 prescribed time period, enrollment in the investment plan is  
 366 effective on the first day of employment. The employer  
 367 retirement contributions paid through the month of the employee  
 368 plan change shall be transferred to the investment plan, and,  
 369 effective the first day of the next month, the employer shall  
 370 pay the applicable contributions based on the employee  
 371 membership class in the investment plan.

372 c. Any such employee who fails to elect to participate in  
 373 the investment plan within the prescribed time period is deemed  
 374 to have elected to retain membership in the pension plan, and  
 375 the employee's option to elect to participate in the investment  
 376 plan is forfeited.

377 3. With respect to employees who become eligible to

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 378 participate in the investment plan by reason of employment in a  
 379 regularly established position with a local employer commencing  
 380 on or after July 1, 2012:

381 a. Any such employee shall, by default, be enrolled in the  
 382 investment plan at the commencement of employment, and may, by  
 383 the last business day of the 12th month following the employee's  
 384 month of hire, elect to participate in the pension plan. The  
 385 employee's election must be made in writing or by electronic  
 386 means and must be filed with the third-party administrator.

387 b. If the employee files such election within the  
 388 prescribed time period, enrollment in the pension plan is  
 389 effective on the first day of employment. The present value of  
 390 his or her employer retirement contributions under the  
 391 investment plan paid through the month of the employee plan  
 392 change shall be transferred to the pension plan, and, effective  
 393 the first day of the next month, the employer shall pay the  
 394 applicable contributions based on the employee membership class  
 395 in the pension plan.

396 c. Any such employee who fails to elect to participate in  
 397 the pension plan within the prescribed time period is deemed to  
 398 have elected to retain membership in the investment plan, and  
 399 the employee's option to elect to participate in the pension  
 400 plan is forfeited.

401 ~~4.3-~~ For purposes of this paragraph, "local employer" means  
 402 any employer not included in paragraph (a) or paragraph (b).

403 (d) Contributions available for self-direction by a member  
 404 who has not selected one or more specific investment products  
 405 shall be allocated as prescribed by the state board. The third-  
 406 party administrator shall notify the member at least quarterly

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407 that the member should take an affirmative action to make an  
408 asset allocation among the investment products.

409 (e) On or after July 1, 2011, a member of the pension plan  
410 who obtains a refund of employee contributions retains his or  
411 her prior plan choice upon return to employment in a regularly  
412 established position with a participating employer.

413 (f) A member of the investment plan who takes a  
414 distribution of any contributions from his or her investment  
415 plan account is considered a retiree. A retiree who is initially  
416 reemployed on or after July 1, 2010, is not eligible for renewed  
417 membership.

418 (g) After the period during which an eligible employee had  
419 the choice to elect the pension plan or the investment plan, or  
420 the month following the receipt of the eligible employee's plan  
421 election, if sooner, the employee shall have one opportunity, at  
422 the employee's discretion, to choose to move from the pension  
423 plan to the investment plan or from the investment plan to the  
424 pension plan. However, employees initially enrolled in the  
425 investment plan on or after July 1, 2012, may not move from the  
426 investment plan to the pension plan after the close of the  
427 initial prescribed time period to do so. Eligible employees may  
428 elect to move between plans only if they are earning service  
429 credit in an employer-employee relationship consistent with s.  
430 121.021(17)(b), excluding leaves of absence without pay.  
431 Effective July 1, 2005, such elections are effective on the  
432 first day of the month following the receipt of the election by  
433 the third-party administrator and are not subject to the  
434 requirements regarding an employer-employee relationship or  
435 receipt of contributions for the eligible employee in the

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436 effective month, except when the election is received by the  
437 third-party administrator. This paragraph is contingent upon  
438 approval by the Internal Revenue Service.

439 1. If the employee chooses to move to the investment plan,  
440 the provisions of subsection (3) govern the transfer.

441 2. If the employee chooses to move to the pension plan, the  
442 employee must transfer from his or her investment plan account,  
443 and from other employee moneys as necessary, a sum representing  
444 the present value of that employee's accumulated benefit  
445 obligation immediately following the time of such movement,  
446 determined assuming that attained service equals the sum of  
447 service in the pension plan and service in the investment plan.  
448 Benefit commencement occurs on the first date the employee is  
449 eligible for unreduced benefits, using the discount rate and  
450 other relevant actuarial assumptions that were used to value the  
451 pension plan liabilities in the most recent actuarial valuation.  
452 For any employee who, at the time of the second election,  
453 already maintains an accrued benefit amount in the pension plan,  
454 the then-present value of the accrued benefit is deemed part of  
455 the required transfer amount. The division must ensure that the  
456 transfer sum is prepared using a formula and methodology  
457 certified by an enrolled actuary. A refund of any employee  
458 contributions or additional member payments made which exceed  
459 the employee contributions that would have accrued had the  
460 member remained in the pension plan and not transferred to the  
461 investment plan is not permitted.

462 3. Notwithstanding subparagraph 2., an employee who chooses  
463 to move to the pension plan and who became eligible to  
464 participate in the investment plan by reason of employment in a

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 465 regularly established position with a state employer after June  
 466 1, 2002; a district school board employer after September 1,  
 467 2002; or a local employer after December 1, 2002, must transfer  
 468 from his or her investment plan account, and from other employee  
 469 moneys as necessary, a sum representing the employee's actuarial  
 470 accrued liability. A refund of any employee contributions or  
 471 additional participant payments made which exceed the employee  
 472 contributions that would have accrued had the member remained in  
 473 the pension plan and not transferred to the investment plan is  
 474 not permitted.

475 4. An employee's ability to transfer from the pension plan  
 476 to the investment plan pursuant to paragraphs (a)-(d), and the  
 477 ability of a current employee to have an option to later  
 478 transfer back into the pension plan under subparagraph 2., shall  
 479 be deemed a significant system amendment. Pursuant to s.  
 480 121.031(4), any resulting unfunded liability arising from actual  
 481 original transfers from the pension plan to the investment plan  
 482 must be amortized within 30 plan years as a separate unfunded  
 483 actuarial base independent of the reserve stabilization  
 484 mechanism defined in s. 121.031(3)(f). For the first 25 years, a  
 485 direct amortization payment may not be calculated for this base.  
 486 During this 25-year period, the separate base shall be used to  
 487 offset the impact of employees exercising their second program  
 488 election under this paragraph. The actuarial funded status of  
 489 the pension plan will not be affected by such second program  
 490 elections in any significant manner, after due recognition of  
 491 the separate unfunded actuarial base. Following the initial 25-  
 492 year period, any remaining balance of the original separate base  
 493 shall be amortized over the remaining 5 years of the required

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 494 30-year amortization period.  
 495 5. If the employee chooses to transfer from the investment  
 496 plan to the pension plan and retains an excess account balance  
 497 in the investment plan after satisfying the buy-in requirements  
 498 under this paragraph, the excess may not be distributed until  
 499 the member retires from the pension plan. The excess account  
 500 balance may be rolled over to the pension plan and used to  
 501 purchase service credit or upgrade creditable service in the  
 502 pension plan.

503 Section 4. This act shall take effect July 1, 2012.

**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: CS/SB 1390

INTRODUCER: Judiciary Committee and Senator Joyner

SUBJECT: Public Records/Victims of Domestic Violence

DATE: February 9, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cibula	JU	Fav/CS
2.	Seay	Roberts	GO	Pre-meeting
3.				
4.				
5.				
6.				

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

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

**I. Summary:**

Current law requires the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence. This process requires the petitioner to provide the clerk of court and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the clerk and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

This bill requires the Association to apprise the petitioner of his or her right to request in writing that specified information held by the Association and law enforcement agencies be exempt from public records requirements. The bill provides that such information shall be exempt upon the written request by the petitioner, for 5 years after the receipt of the written request. The bill grants access to any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties. As this bill creates new public records

exemptions, the exemptions are subject to repeal on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill substantially amends sections 741.30 and 784.046 of the Florida Statutes.

## II. Present Situation:

### Public Records Law

The State of Florida has a long history of providing public access to governmental records. 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:

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

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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

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

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

<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.

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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 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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. 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

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<sup>5</sup> Section 119.011(11), 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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

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

The Act also requires consideration of 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?

### **Public Record Exemptions for Victims of Violent and Sexual Crimes**

The Legislature has previously enacted public record exemptions for victims of crimes.<sup>17</sup> For example, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from the public records requirements.<sup>18</sup> More broadly, the Legislature enacted a blanket exemption from the public records laws for “[a]ny document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime.”<sup>19</sup>

Furthermore, an exemption from the public records laws exists for any information, not otherwise held confidential or exempt, which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence.<sup>20</sup> To apply for an exemption, the victim files a written request to the appropriate agency, which must include official verification that an applicable crime has occurred.

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<sup>16</sup> Section 119.15(4)(b), F.S.

<sup>17</sup> See sections 119.071 and 119.0714, F.S.

<sup>18</sup> Section 119.0714(1)(h), F.S.

<sup>19</sup> Section 119.071(2)(j)1., F.S.

<sup>20</sup> *Id.*

### **Injunctions for Victims of Violence**

Sections 741.30 and 784.046, F.S., provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. During the 2011 Legislative Session, these statutes were amended to require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.<sup>21</sup> This process necessarily requires the petitioner to provide the Association with personal contact information. In many instances, the petitioner is a victim of a crime, and thus the information he or she provides to the Association may be exempt from public records requirements pursuant to s. 119.07, F.S. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

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

**Sections 1 and 2** amend s. 741.30, F.S. and s. 784.046, F.S., respectively, providing that the Florida Association of Court Clerks and Comptrollers apprise a petitioner of his or her right to make a public records exemption request; providing that a petitioner may request information which reveals a home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner to be exempt from public records requirements; providing that such information would cease to be exempt 5 years after the Association's receipt of the petitioner's written request; granting access to state or federal agencies authorized by law to have access to exempt documents in furtherance of the agency's statutory duties; providing for future review and repeal pursuant to the Open Government Sunset Review Act.

**Section 3** provides a public necessity statement as required by the State Constitution.

**Section 4** provides an effective date of July 1, 2012.

### **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 or expanded public records or public

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<sup>21</sup> Chapter 2011-187, Laws of Fla.

meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

### **Public Necessity Statement**

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

#### **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.)

##### **CS by Judiciary – January 26, 2012:**

The committee substitute requires that a petitioner be notified of his or her right to make the public records exemption request at the same time that the petitioner is making the request to be notified that the injunction was served. The committee substitute expands the exemption to exempt information held by law enforcement agencies, not just the information held by the Florida Association of Court Clerks and Comptrollers. Lastly, the committee substitute makes the public necessity statement conform to the remainder of the bill, by removal of the reference to information being held confidential.

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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LEGISLATIVE ACTION

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (c) of subsection (8) of section  
741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of  
court and clerk; petition; notice and hearing; temporary  
injunction; issuance of injunction; statewide verification  
system; enforcement; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction



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13 for protection against domestic violence or changes, continues,  
14 extends, or vacates an injunction for protection against  
15 domestic violence, the clerk of the court must forward a  
16 certified copy of the injunction for service to the sheriff with  
17 jurisdiction over the residence of the petitioner. The  
18 injunction must be served in accordance with this subsection.

19 2. Within 24 hours after service of process of an  
20 injunction for protection against domestic violence upon a  
21 respondent, the law enforcement officer must forward the written  
22 proof of service of process to the sheriff with jurisdiction  
23 over the residence of the petitioner.

24 3. Within 24 hours after the sheriff receives a certified  
25 copy of the injunction for protection against domestic violence,  
26 the sheriff must make information relating to the injunction  
27 available to other law enforcement agencies by electronically  
28 transmitting such information to the department.

29 4. Within 24 hours after the sheriff or other law  
30 enforcement officer has made service upon the respondent and the  
31 sheriff has been so notified, the sheriff must make information  
32 relating to the service available to other law enforcement  
33 agencies by electronically transmitting such information to the  
34 department.

35 5.a. Subject to available funding, the Florida Association  
36 of Court Clerks and Comptrollers shall develop an automated  
37 process by which a petitioner may request notification of  
38 service of the injunction for protection against domestic  
39 violence and other court actions related to the injunction for  
40 protection. The automated notice shall be made within 12 hours  
41 after the sheriff or other law enforcement officer serves the



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42 injunction upon the respondent. The notification must include,  
43 at a minimum, the date, time, and location where the injunction  
44 for protection against domestic violence was served. When a  
45 petitioner makes a request for notification, the clerk must  
46 apprise the petitioner of her or his right to request in writing  
47 that the information specified in sub-subparagraph b. be held  
48 exempt from public records requirements for 5 years. The Florida  
49 Association of Court Clerks and Comptrollers may apply for any  
50 available grants to fund the development of the automated  
51 process.

52 b. Upon implementation of the automated process,  
53 information held by clerks and law enforcement agencies in  
54 conjunction with the automated process developed under sub-  
55 subparagraph a. which reveals the home or employment telephone  
56 number, cellular telephone number, home or employment address,  
57 electronic mail address, or other electronic means of  
58 identification of a petitioner requesting notification of  
59 service of an injunction for protection against domestic  
60 violence and other court actions related to the injunction for  
61 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of  
62 the State Constitution, upon written request by the petitioner.  
63 Such information shall cease to be exempt 5 years after the  
64 receipt of the written request. Any state or federal agency that  
65 is authorized to have access to such documents by any provision  
66 of law shall be granted such access in the furtherance of such  
67 agency's statutory duties, notwithstanding this sub-  
68 subparagraph. This sub-subparagraph is subject to the Open  
69 Government Sunset Review Act in accordance with s. 119.15 and  
70 shall stand repealed on October 2, 2017, unless reviewed and



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71 saved from repeal through reenactment by the Legislature.

72         6. Within 24 hours after an injunction for protection  
73 against domestic violence is vacated, terminated, or otherwise  
74 rendered no longer effective by ruling of the court, the clerk  
75 of the court must notify the sheriff receiving original  
76 notification of the injunction as provided in subparagraph 2.  
77 That agency shall, within 24 hours after receiving such  
78 notification from the clerk of the court, notify the department  
79 of such action of the court.

80         Section 2. Paragraph (c) of subsection (8) of section  
81 784.046, Florida Statutes, is amended to read:

82         784.046 Action by victim of repeat violence, sexual  
83 violence, or dating violence for protective injunction; dating  
84 violence investigations, notice to victims, and reporting;  
85 pretrial release violations; public records exemption.—

86         (8)

87         (c)1. Within 24 hours after the court issues an injunction  
88 for protection against repeat violence, sexual violence, or  
89 dating violence or changes or vacates an injunction for  
90 protection against repeat violence, sexual violence, or dating  
91 violence, the clerk of the court must forward a copy of the  
92 injunction to the sheriff with jurisdiction over the residence  
93 of the petitioner.

94         2. Within 24 hours after service of process of an  
95 injunction for protection against repeat violence, sexual  
96 violence, or dating violence upon a respondent, the law  
97 enforcement officer must forward the written proof of service of  
98 process to the sheriff with jurisdiction over the residence of  
99 the petitioner.



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100           3. Within 24 hours after the sheriff receives a certified  
101 copy of the injunction for protection against repeat violence,  
102 sexual violence, or dating violence, the sheriff must make  
103 information relating to the injunction available to other law  
104 enforcement agencies by electronically transmitting such  
105 information to the department.

106           4. Within 24 hours after the sheriff or other law  
107 enforcement officer has made service upon the respondent and the  
108 sheriff has been so notified, the sheriff must make information  
109 relating to the service available to other law enforcement  
110 agencies by electronically transmitting such information to the  
111 department.

112           5.a. Subject to available funding, the Florida Association  
113 of Court Clerks and Comptrollers shall develop an automated  
114 process by which a petitioner may request notification of  
115 service of the injunction for protection against repeat  
116 violence, sexual violence, or dating violence and other court  
117 actions related to the injunction for protection. The automated  
118 notice shall be made within 12 hours after the sheriff or other  
119 law enforcement officer serves the injunction upon the  
120 respondent. The notification must include, at a minimum, the  
121 date, time, and location where the injunction for protection  
122 against repeat violence, sexual violence, or dating violence was  
123 served. When a petitioner makes a request for notification, the  
124 clerk must apprise the petitioner of her or his right to request  
125 in writing that the information specified in sub-subparagraph b.  
126 be held exempt from public records requirements for 5 years. The  
127 Florida Association of Court Clerks and Comptrollers may apply  
128 for any available grants to fund the development of the



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129 automated process.

130 b. Upon implementation of the automated process,  
131 information held by clerks and law enforcement agencies in  
132 conjunction with the automated process developed under sub-  
133 subparagraph a. which reveals the home or employment telephone  
134 number, cellular telephone number, home or employment address,  
135 electronic mail address, or other electronic means of  
136 identification of a petitioner requesting notification of  
137 service of an injunction for protection against repeat violence,  
138 sexual violence, or dating violence and other court actions  
139 related to the injunction for protection is exempt from s.  
140 119.07(1) and s. 24(a), Art. I of the State Constitution, upon  
141 written request by the petitioner. Such information shall cease  
142 to be exempt 5 years after the receipt of the written request.  
143 Any state or federal agency that is authorized to have access to  
144 such documents by any provision of law shall be granted such  
145 access in the furtherance of such agency's statutory duties,  
146 notwithstanding this sub-subparagraph. This sub-subparagraph is  
147 subject to the Open Government Sunset Review Act in accordance  
148 with s. 119.15 and shall stand repealed on October 2, 2017,  
149 unless reviewed and saved from repeal through reenactment by the  
150 Legislature.

151 6. Within 24 hours after an injunction for protection  
152 against repeat violence, sexual violence, or dating violence is  
153 lifted, terminated, or otherwise rendered no longer effective by  
154 ruling of the court, the clerk of the court must notify the  
155 sheriff or local law enforcement agency receiving original  
156 notification of the injunction as provided in subparagraph 2.  
157 That agency shall, within 24 hours after receiving such



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158 notification from the clerk of the court, notify the department  
159 of such action of the court.

160 Section 3. It is the finding of the Legislature that it is  
161 a public necessity that personal identifying and location  
162 information of victims of domestic violence, repeat violence,  
163 sexual violence, and dating violence held by the clerks and law  
164 enforcement agencies in conjunction with the automated process  
165 developed by the Florida Association of Court Clerks and  
166 Comptrollers under ss. 741.30 and 784.046, Florida Statutes, by  
167 which a petitioner may request notification of service of an  
168 injunction for protection against domestic violence, repeat  
169 violence, sexual violence, or dating violence and other court  
170 actions related to the injunction for protection be held exempt  
171 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
172 the State Constitution upon written request by the petitioner.  
173 Such information, if publicly available, could expose the  
174 victims of domestic violence, repeat violence, sexual violence,  
175 and dating violence to public humiliation and shame and could  
176 inhibit the victim from availing herself or himself of relief  
177 provided under state law. Additionally, if such information were  
178 publicly available, it could be used by the partner or former  
179 partner of the victim of domestic violence, repeat violence,  
180 sexual violence, or dating violence to determine the location of  
181 the victim, thus placing the victim in jeopardy.

182 Section 4. This act shall take effect October 1, 2012.

183  
184 ===== T I T L E A M E N D M E N T =====

185 And the title is amended as follows:

186 Delete everything before the enacting clause



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187 and insert:

188                   A bill to be entitled  
189           An act relating to public records; amending ss. 741.30  
190           and 784.046, F.S.; providing exemptions from public  
191           records requirements for personal identifying and  
192           location information of victims of domestic violence,  
193           repeat violence, sexual violence, and dating violence  
194           held by the clerks and law enforcement agencies in  
195           conjunction with the automated process developed by  
196           the association by which a petitioner may request  
197           notification of service of an injunction for  
198           protection against domestic violence, repeat violence,  
199           sexual violence, or dating violence and other court  
200           actions related to the injunction for protection;  
201           providing that the exemption is conditional upon the  
202           petitioner's written request; providing specified  
203           duration of the exemption; providing for access by  
204           state or federal agencies in furtherance of the  
205           agencies' statutory duties; requiring that the clerk  
206           inform the petitioner of the right to request that the  
207           identifying and location information be held exempt  
208           from public records requirements; providing for future  
209           legislative review and repeal of the exemptions;  
210           providing a statement of public necessity; providing  
211           an effective date.

By the Committee on Judiciary; and Senator Joyner

590-02323-12

20121390c1

A bill to be entitled

An act relating to public records; amending ss. 741.30 and 784.046, F.S.; providing exemptions from public records requirements for personal identifying and location information of victims of domestic violence, repeat violence, sexual violence, and dating violence held by the Florida Association of Court Clerks and Comptrollers and law enforcement agencies in conjunction with the automated process developed by the association by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection; providing that the exemption is conditional upon the petitioner's request; providing specified duration of the exemption; providing for access by state or federal agencies in furtherance of the agencies' statutory duties; providing that the Florida Association of Court Clerks and Comptrollers must inform the petitioner of the right to request that the identifying and location information be held exempt from public records requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Page 1 of 8

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

590-02323-12

20121390c1

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:  
741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.-

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the

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

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59 department.

60 5.a. Subject to available funding, the Florida Association  
61 of Court Clerks and Comptrollers shall develop an automated  
62 process by which a petitioner may request notification of  
63 service of the injunction for protection against domestic  
64 violence and other court actions related to the injunction for  
65 protection. The automated notice shall be made within 12 hours  
66 after the sheriff or other law enforcement officer serves the  
67 injunction upon the respondent. The notification must include,  
68 at a minimum, the date, time, and location where the injunction  
69 for protection against domestic violence was served. When a  
70 petitioner makes a request for notification, the Florida  
71 Association of Court Clerks and Comptrollers must apprise the  
72 petitioner of her or his right to request in writing that the  
73 information specified in sub-subparagraph b. be held exempt from  
74 public records requirements for 5 years. The Florida Association  
75 of Court Clerks and Comptrollers may apply for any available  
76 grants to fund the development of the automated process.

77 b. Information held by the Florida Association of Court  
78 Clerks and Comptrollers and law enforcement agencies in  
79 conjunction with the automated process developed under sub-  
80 paragraph a. which reveals the home or employment telephone  
81 number, cellular telephone number, home or employment address,  
82 electronic mail address, or other electronic means of  
83 identification of a petitioner requesting notification of  
84 service of an injunction for protection against domestic  
85 violence and other court actions related to the injunction for  
86 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of  
87 the State Constitution, upon written request by the petitioner.

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88 Such information shall cease to be exempt 5 years after the  
89 receipt of the written request. Any state or federal agency that  
90 is authorized to have access to such documents by any provision  
91 of law shall be granted such access in the furtherance of such  
92 agency's statutory duties, notwithstanding this sub-  
93 paragraph. This sub-subparagraph is subject to the Open  
94 Government Sunset Review Act in accordance with s. 119.15 and  
95 shall stand repealed on October 2, 2017, unless reviewed and  
96 saved from repeal through reenactment by the Legislature.

97 6. Within 24 hours after an injunction for protection  
98 against domestic violence is vacated, terminated, or otherwise  
99 rendered no longer effective by ruling of the court, the clerk  
100 of the court must notify the sheriff receiving original  
101 notification of the injunction as provided in subparagraph 2.  
102 That agency shall, within 24 hours after receiving such  
103 notification from the clerk of the court, notify the department  
104 of such action of the court.

105 Section 2. Paragraph (c) of subsection (8) of section  
106 784.046, Florida Statutes, is amended to read:

107 784.046 Action by victim of repeat violence, sexual  
108 violence, or dating violence for protective injunction; dating  
109 violence investigations, notice to victims, and reporting;  
110 pretrial release violations; public records exemption.-

111 (8)

112 (c)1. Within 24 hours after the court issues an injunction  
113 for protection against repeat violence, sexual violence, or  
114 dating violence or changes or vacates an injunction for  
115 protection against repeat violence, sexual violence, or dating  
116 violence, the clerk of the court must forward a copy of the

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117 injunction to the sheriff with jurisdiction over the residence  
118 of the petitioner.

119 2. Within 24 hours after service of process of an  
120 injunction for protection against repeat violence, sexual  
121 violence, or dating violence upon a respondent, the law  
122 enforcement officer must forward the written proof of service of  
123 process to the sheriff with jurisdiction over the residence of  
124 the petitioner.

125 3. Within 24 hours after the sheriff receives a certified  
126 copy of the injunction for protection against repeat violence,  
127 sexual violence, or dating violence, the sheriff must make  
128 information relating to the injunction available to other law  
129 enforcement agencies by electronically transmitting such  
130 information to the department.

131 4. Within 24 hours after the sheriff or other law  
132 enforcement officer has made service upon the respondent and the  
133 sheriff has been so notified, the sheriff must make information  
134 relating to the service available to other law enforcement  
135 agencies by electronically transmitting such information to the  
136 department.

137 5.a. Subject to available funding, the Florida Association  
138 of Court Clerks and Comptrollers shall develop an automated  
139 process by which a petitioner may request notification of  
140 service of the injunction for protection against repeat  
141 violence, sexual violence, or dating violence and other court  
142 actions related to the injunction for protection. The automated  
143 notice shall be made within 12 hours after the sheriff or other  
144 law enforcement officer serves the injunction upon the  
145 respondent. The notification must include, at a minimum, the

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146 date, time, and location where the injunction for protection  
147 against repeat violence, sexual violence, or dating violence was  
148 served. When a petitioner makes a request for notification, the  
149 Florida Association of Court Clerks and Comptrollers must  
150 advise the petitioner of her or his right to request in writing  
151 that the information specified in sub-subparagraph b. be held  
152 exempt from public records requirements for 5 years. The Florida  
153 Association of Court Clerks and Comptrollers may apply for any  
154 available grants to fund the development of the automated  
155 process.

156 b. Information held by the Florida Association of Court  
157 Clerks and Comptrollers and law enforcement agencies in  
158 conjunction with the automated process developed under sub-  
159 paragraph a. which reveals the home or employment telephone  
160 number, cellular telephone number, home or employment address,  
161 electronic mail address, or other electronic means of  
162 identification of a petitioner requesting notification of  
163 service of an injunction for protection against repeat violence,  
164 sexual violence, or dating violence and other court actions  
165 related to the injunction for protection is exempt from s.  
166 119.07(1) and s. 24(a), Art. I of the State Constitution, upon  
167 written request by the petitioner. Such information shall cease  
168 to be exempt 5 years after the receipt of the written request.  
169 Any state or federal agency that is authorized to have access to  
170 such documents by any provision of law shall be granted such  
171 access in the furtherance of such agency's statutory duties,  
172 notwithstanding this sub-subparagraph. This sub-subparagraph is  
173 subject to the Open Government Sunset Review Act in accordance  
174 with s. 119.15 and shall stand repealed on October 2, 2017,

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175 unless reviewed and saved from repeal through reenactment by the  
 176 Legislature.

177 6. Within 24 hours after an injunction for protection  
 178 against repeat violence, sexual violence, or dating violence is  
 179 lifted, terminated, or otherwise rendered no longer effective by  
 180 ruling of the court, the clerk of the court must notify the  
 181 sheriff or local law enforcement agency receiving original  
 182 notification of the injunction as provided in subparagraph 2.  
 183 That agency shall, within 24 hours after receiving such  
 184 notification from the clerk of the court, notify the department  
 185 of such action of the court.

186 Section 3. It is the finding of the Legislature that it is  
 187 a public necessity that personal identifying and location  
 188 information of victims of domestic violence, repeat violence,  
 189 sexual violence, and dating violence held by the Florida  
 190 Association of Court Clerks and Comptrollers and law enforcement  
 191 agencies in conjunction with the automated process developed by  
 192 the association under ss. 741.30 and 784.046, Florida Statutes,  
 193 by which a petitioner may request notification of service of an  
 194 injunction for protection against domestic violence, repeat  
 195 violence, sexual violence, or dating violence and other court  
 196 actions related to the injunction for protection be held exempt  
 197 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
 198 the State Constitution upon written request by the petitioner.  
 199 Such information, if publicly available, could expose the  
 200 victims of domestic violence, repeat violence, sexual violence,  
 201 and dating violence to public humiliation and shame and could  
 202 inhibit the victim from availing herself or himself of relief  
 203 provided under state law. Additionally, if such information were

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204 publicly available, it could be used by the partner or former  
 205 partner of the victim of domestic violence, repeat violence,  
 206 sexual violence, or dating violence to determine the location of  
 207 the victim, thus placing the victim in jeopardy.

208 Section 4. This act shall take effect October 1, 2012.

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

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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**BILL:** SB 1862

**INTRODUCER:** Senator Negrón

**SUBJECT:** Public Records/Donor Identifying Information/Division of Insurance Fraud

**DATE:** February 14, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill creates a public records exemption for the identity of a donor or prospective donor, who desires to remain anonymous, to the motor vehicle insurance fraud direct-support organization of the Division of Insurance Fraud. The bill provides for future review and repeal pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, it contains a public necessity statement as required by the State Constitution.

This bill substantially amends section 626.9895 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. 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:

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

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

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

made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, 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:

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

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>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</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>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>

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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.

<sup>5</sup> Section 119.011(11), 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 Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</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>10</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>11</sup> Art. I, s. 24(c), Fla. Constitution.

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>12</sup> If a record is simply made exempt from disclosure requirements then 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)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, 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>15</sup>

The Act states that an exemption may be created 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. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

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

The Act also requires consideration of 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?

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<sup>12</sup> Attorney General Opinion 85-62.

<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> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

<sup>16</sup> Section 119.15(4)(b), F.S.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

**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. Information which, if released, would identify prospective donors.	s. 265.605(2)	Confidential and exempt from s. 119.07(1), F.S.
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 Organizations

### *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>17</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>18</sup>

Florida law generally requires 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.

### Motor Vehicle Insurance Fraud Direct Support Organization

Pending legislation in the 2012 Legislative Session<sup>19</sup> creates the motor vehicle insurance fraud DSO within the Department of Financial Services’ Division of Insurance Fraud. The DSO’s sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The DSO is to be set up as a not-for-profit corporation in accordance with Florida law and will be allowed to raise funds by requesting and receiving grants, gifts, and bequests of money.

## III. Effect of Proposed Changes:

**Section 1** amends s. 626.9895, F.S., providing that the identity of a donor or prospective donor to the motor vehicle insurance fraud DSO who desires to remain anonymous is confidential and

<sup>17</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>18</sup> *Id.*

<sup>19</sup> Senate Bill 1860, 2012 Legislative Session.

exempt from public records requirements, providing that anonymity will be maintained in an annual financial audit; providing future review and repeal pursuant to the Open Government Sunset Review Act.

**Section 2** provides a public necessity statement as required by the State Constitution.

**Section 3** contains a contingent effective date.

#### **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 or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

**Public Necessity Statement**

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, 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 the motor vehicle insurance fraud DSO would have the option of requesting anonymity, which may encourage private entities to donate.

C. Government Sector Impact:

The exemption may encourage donations and may result in a financial gain to the motor vehicle insurance fraud DSO.

**VI. Technical Deficiencies:**

Sections 1 and 3 need to be amended to include references to Senate Bill 1860, the substantive legislation that authorizes the Division of Insurance Fraud to establish the motor vehicle insurance fraud DSO.

**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.



422464

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete line 16

and insert:

Florida Statutes, as created by CS for SB 1860, to read:

Delete line 63

and insert:

CS for SB 1860 or similar legislation takes effect, if such

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

And the title is amended as follows:

Delete line 3



422464

13 and insert:

14 626.9895, F.S., as created by CS for SB 1860;

By Senator Negrón

28-01433-12

20121862\_\_

1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 626.9895, F.S., as created by Senate Bill \_\_\_\_;  
4 exempting from public record requirements all  
5 identifying information of a donor or prospective  
6 donor to the motor vehicle insurance fraud direct-  
7 support organization of the Division of Insurance  
8 Fraud; providing for future repeal and legislative  
9 review of the exemption under the Open Government  
10 Sunset Review Act; providing a statement of public  
11 necessity; providing a contingent effective date.  
12

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

15 Section 1. Subsection (9) is added to section 626.9895,  
16 Florida Statutes, as created by Senate Bill \_\_\_\_, to read:  
17 626.9895 Motor vehicle insurance fraud direct-support  
18 organization.—

19 (9) DONOR CONFIDENTIALITY.—

20 (a) The identity of a donor or prospective donor to the  
21 organization who desires to remain anonymous and all other  
22 information identifying such donor or prospective donor are  
23 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
24 of the State Constitution. Such anonymity shall be maintained in  
25 the annual financial audit created pursuant to subsection (2).

26 (b) This subsection is subject to the Open Government  
27 Sunset Review Act in accordance with s. 119.15 and shall stand  
28 repealed on October 2, 2017, unless reviewed and saved from  
29 repeal through reenactment by the Legislature.

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

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30 Section 2. The Legislature finds that it is a public  
31 necessity that information identifying a donor or prospective  
32 donor to the Automobile Insurance Fraud Strike Force direct-  
33 support organization of the Division of Insurance Fraud be made  
34 confidential and exempt from public records requirements if such  
35 donor or prospective donor desires to remain anonymous.  
36 Fraudulent activity in the personal injury protection insurance  
37 system in this state has reached unprecedented levels. The  
38 direct-support organization is created for the purpose of  
39 supporting efforts by the Division of Insurance Fraud to  
40 investigate, prosecute, and prevent motor vehicle insurance  
41 fraud. In order to obtain support for the organization and its  
42 mission, it is necessary to promote the raising of private funds  
43 for these anti-fraud efforts. An essential element of such  
44 support is the need to protect the identity of prospective and  
45 actual donors who desire to remain anonymous. There is a  
46 chilling effect on donations when the identity of individual  
47 donors is subject to disclosure because donors are concerned  
48 about the disclosure of sensitive personal information, which  
49 can lead to theft, including identity theft, and jeopardize the  
50 personal safety and security of such individuals. The disclosure  
51 of the identity of an entity that is a prospective or actual  
52 donor can also provide competitors in the marketplace with  
53 insights into the finances of that entity and thereby cause  
54 injury to the entity. The chilling effect on donations would, in  
55 turn, impede the efforts of the state to combat motor vehicle  
56 insurance fraud. Therefore, the Legislature finds that it is a  
57 public necessity to make confidential and exempt from public  
58 records requirements information that would identify a donor or

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20121862\_\_

59 prospective donor to the motor vehicle insurance fraud direct-  
60 support organization if such donor or prospective donor wishes  
61 to remain anonymous.

62 Section 3. This act shall take effect on the same date that  
63 Senate Bill \_\_\_ or similar legislation takes effect, if such  
64 legislation is adopted in the same legislative session, or an  
65 extension thereof, and becomes law.

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

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 2078

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/U.S. Census Bureau Address Information

DATE: February 14, 2012

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

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

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**I. Summary:**

This bill is the result of the Governmental Oversight and Accountability Committee’s Open Government Sunset Review of the public records exemption for United States Census Bureau address information held by an agency pursuant to the Local Update of Census Address (LUCA) Program. This public records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. The Sunset Review recommended that this public records exemption be repealed as the U.S. Census Bureau has ended the LUCA Program.

This bill repeals section 119.071 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

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

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

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

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

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

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

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>5</sup>

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

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

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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.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

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

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

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

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

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

The Act also requires the Legislature to consider the following:

- 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?

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

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

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

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

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

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

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

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

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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

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

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

### **Local Update of Census Address Program**

The Local Update of Census Addresses Program (LUCA Program) was a decennial census geographic partnership program designed to allow the United States Census Bureau to benefit from local knowledge in developing its Master Address File<sup>18</sup> for the 2010 census.<sup>19</sup> The LUCA Program was made possible by the Census Address List Improvement Act of 1994, which authorizes designated representatives of local and tribal governments to review the Master Address File.<sup>20</sup>

The LUCA Program required that participating governments designate a LUCA liaison to review the portion of the census address list covering the area under the participating government's jurisdiction.<sup>21</sup> The LUCA liaison was subject to the same confidentiality requirements as census workers and was prohibited from disclosing census information.<sup>22</sup> LUCA Program participants

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

<sup>18</sup> The Master Address File is an inventory of all addresses and physical/location descriptions assembled by the Census Bureau, including their geographic locations, and serves as the source of addresses for mailing and delivering decennial census forms and for physically locating the addresses when necessary. See Prepared Statement of Robert M. Groves, Director of the U.S. Census Bureau, *2010 Census: Master Address File, Issues and Concerns*, [http://www.census.gov/newsroom/releases/pdf/Groves\\_House\\_Testimony\\_10-21\\_Final.pdf](http://www.census.gov/newsroom/releases/pdf/Groves_House_Testimony_10-21_Final.pdf) (last viewed Jan. 18, 2012).

<sup>19</sup> U.S. Census Bureau, *2010 Decennial Census Local Update of Census Addresses (LUCA)*, <http://www.census.gov/geo/www/luca2010/luca.html> (last viewed Jan. 18, 2012).

<sup>20</sup> Public Law 103-430.

<sup>21</sup> U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, [http://www.census.gov/geo/www/luca2010/luca\\_ov.html](http://www.census.gov/geo/www/luca2010/luca_ov.html) (last viewed Jan. 18, 2012).

<sup>22</sup> Federal law requires the U.S. Census Bureau to maintain the confidentiality of certain information that it collects. This confidentiality helps to ensure that the bureau maintains the most accurate data possible. To uphold the law, the bureau requires that all individuals who work with the confidential information must abide by a confidentiality and security

were required to review a set of security guidelines and to sign a confidentiality agreement promising to protect the confidential address list, which included corresponding maps and address tallies.<sup>23</sup>

The LUCA Program provided clear guidelines for local government participation and confidentiality; however, the federal law was less clear regarding confidentiality at the state level. Therefore, the Legislature created the public records exemption under review.<sup>24</sup>

The LUCA Program officially ended as of March 31, 2010.<sup>25</sup> Therefore, there is no need to continue the associated public-records exemption for United States Census Bureau address information held by an agency pursuant to the LUCA Program. The United States Census Bureau is currently working on a Geographic Support System Initiative in support of the 2020 Census to improve address coverage, continually update spatial features, and enhance quality assessment and measurement.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** repeals s. 119.071, F.S., relating to the public records exemption for U.S. Census Bureau address information held by an agency pursuant to the Local Update of Census Address Program.

**Section 2** provides that this act takes effect immediately upon becoming a law.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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agreement. Title 13 of the United States Code provides for the confidential treatment of census-related information. Census information includes: everything on a completed or partially completed questionnaire or obtained in a personal or telephone interview; individual addresses maintained by the LUCA Program liaisons review; and maps that identify the location of individual housing units and/or group quarters.

<sup>23</sup> U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, [http://www.census.gov/geo/www/luca2010/luca\\_ov.html](http://www.census.gov/geo/www/luca2010/luca_ov.html) (last viewed Jan. 18, 2012).

<sup>24</sup> Chapter 2007-250, Laws of Florida.

<sup>25</sup> U.S. Census Bureau, *LUCA Closeout Phase*, [http://www.census.gov/geo/www/luca2010/luca\\_co.html](http://www.census.gov/geo/www/luca2010/luca_co.html) (last viewed Jan. 18, 2012).

<sup>26</sup> U.S. Census Bureau, *Geographic Support System (GSS) Initiative*, <http://www.census.gov/geo/www/gss/index.html> (last viewed Jan. 18, 2012).

**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.

By the Committee on Governmental Oversight and Accountability

585-02463-12

20122078\_\_

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12

A bill to be entitled

An act relating to a review under the Open Government  
Sunset Review Act; repealing s. 119.071(1)(g), F.S.,  
which provides a public records exemption for United  
States Census Bureau address information; providing an  
effective date.

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

Section 1. Paragraph (g) of subsection (1) of section  
119.071, Florida Statutes, is repealed.

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

Jan

1280

STATE OF FLORIDA  
DEPARTMENT OF STATE

Division of Elections

I, Kurt S. Browning, Secretary of State,  
do hereby certify that

*Leslie B. Daniels*

is duly appointed a member of the  
**Investment Advisory Council**

for a term beginning on the  
Fifth day of April, A.D., 2011,  
until the Twelfth day of December, A.D., 2014  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

COPIES OF ORIGINAL OPERATIONS

SEP 8 9 2011



Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Eighteenth day of July, A.D., 2011.

*Kurt S. Browning*  
Secretary of State





**RICK SCOTT**  
GOVERNOR

March 24, 2011

Mr. Ash Williams  
Executive Director  
State Board of Administration  
1801 Hermitage Boulevard  
Tallahassee, FL 32308

RECEIVED  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

11 JUN 15 PM 12:07

RECEIVED

Dear Ash:

This letter is to inform you of my request that Mr. Leslie (Les) Daniels be considered for appointment as one of our designees to serve on the State Board of Administration Investment Advisory Council. If appointed, it is my understanding he will serve a four year term. Please see Mr. Daniels' attached biography for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

cc: Les Daniels  
Attorney General Pam Bondi  
Chief Financial Officer Jeff Atwater



STATE BOARD OF ADMINISTRATION  
OF FLORIDA

1801 HERMITAGE BOULEVARD  
TALLAHASSEE, FLORIDA 32308  
(850) 488-4406

POST OFFICE BOX 13300  
32317-3300

RICK SCOTT  
GOVERNOR  
AS CHAIRMAN  
JEFF AYWATER  
CHIEF FINANCIAL OFFICER  
AS TREASURER  
PAM BONDI  
ATTORNEY GENERAL  
AS SECRETARY  
ASH WILLIAMS  
EXECUTIVE DIRECTOR & CIO

May 17, 2011

Inez Williams  
Division of Elections  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399

RECEIVED  
11 JUN 16 AM 10:26  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

RE: Investment Advisory Council Appointment - Leslie B. Daniels

Dear Ms. Williams:

Mr. Leslie B. Daniels has been appointed by Governor Scott to serve on the Investment Advisory Council (IAC) for the State Board of Administration. Attached please find the appointment letter, Questionnaire for Senate Confirmation, and the April 5, 2011, Cabinet transcript reflecting approval of his appointment. He will be replacing Beth McCague (whose term expired in December 2010); therefore, his term will be from April 5, 2011 through December 12, 2014.

Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce  
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments  
Ron Poppell w/o Attachments

# OATH OF OFFICE RECEIVED

(Art. II, § 5(b), Fla. Const.)

11 JUL 18 AM 9:09

STATE OF FLORIDA

County of Palm Beach

DIVISION OF ELECTIONS  
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council

(Title of Office)

on which I am now about to enter, so help me God.

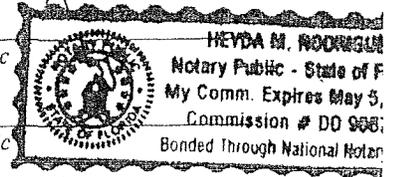
[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature [Handwritten Signature]

Sworn to and subscribed before me this 15 day of July, 2011.

Signature of Officer Administering Oath of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known  OR Produced Identification

Type of Identification Produced Florida Driver's License

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

100 Everglade Ave  
Street or Post Office Box

Palm Beach, FL 33480  
City, State, Zip Code

Leslie B. Daniels  
Print name as you desire commission issued

Signature [Handwritten Signature]

# QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

April 20, 2011

			Date Completed
1. Name:	Mr. Daniels Leslie		Benedict
	MR./MRS./MS.                      LAST                      FIRST                      MIDDLE/MAIDEN		
2. Business Address:	249 Royal Palm Way	Suite 503	Palm Beach
	STREET                      OFFICE #                      CITY		
	Florida	33480	(561) 290-1259
	POST OFFICE BOX                      STATE                      ZIP CODE                      AREA CODE/PHONE NUMBER		
3. Residence Address:	100 Everglade Avenue	Palm Beach	Palm Beach
	STREET                      CITY                      COUNTY		
	Florida	33480	(561) 655-5135
	POST OFFICE BOX                      STATE                      ZIP CODE                      AREA CODE/PHONE NUMBER		
Specify the preferred mailing address:	Business <input type="checkbox"/>	Residence <input checked="" type="checkbox"/>	Fax # (561) 655-2748
			(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
100 Everglade Avenue	Palm Beach, FL	2004	to Present
1040 Fifth Avenue, 8A	New York, NY	1986	to 2010
Neison Island	Greenwich, CT	1980	to 2010

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
1040 Fifth Avenue, 8A	New York, NY	1986	to 2010
Neison Island	Greenwich, CT	1980	to 2010
262 East 78th Street	New York, NY	1976	to 1986

5. Date of Birth: April 3, 1947 Place of Birth: Youngstown, OH

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. Are you a United States citizen? Yes  No  If "No" explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 2011

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of registration: Palm Beach B. Current party affiliation: Republican

12. Education

A. High School: Gilmour Academy, Gates Mills, OH Year Graduated: 1965

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
Ohio University, OH	1966-1967	
Youngstown University, OH	1968-1969	
Fordham University, NY	Various	BA, major economics

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of service: \_\_\_\_\_

B. Branch or component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
N/A			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
CAI Managers & Co., L.P. 70 East 55th Street, New York, NY	Private Equity	Managing Partner	1989 - present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
----------	------------------	----------------------

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.  
I have 40 years work experience in the financial markets including government, municipal and corporate bonds, mortgages, equities and some derivatives. I have also founded and run a business trading private placements and investing in venture capital. I am currently a Managing Partner in a business that I co-founded that is involved in private equity in the United States and Canada.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE

DATE OF ELECTION OR APPOINTMENT

TERM OF OFFICE

LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: \_\_\_\_\_

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_  
B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

A. Title of Office: \_\_\_\_\_  
B. Term of Appointment: \_\_\_\_\_  
C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>NAME OF BUSINESS</u>	<u>FAMILY MEMBER'S RELATIONSHIP TO YOU</u>	<u>FAMILY MEMBER'S RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>AGENCY LOBBIED</u>	<u>PRINCIPAL REPRESENTED</u>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>ZIP CODE</u>	<u>AREA CODE/PHONE NUMBER</u>
Governor Scott			
Michael F. Price			
Richard J. Schmeelk			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>OFFICE(S) HELD &amp; TERM</u>	<u>DATE(S) OF MEMBERSHIP</u>
N/A			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

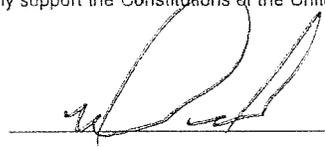
30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

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2011 JUN 15 AM 9:31  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

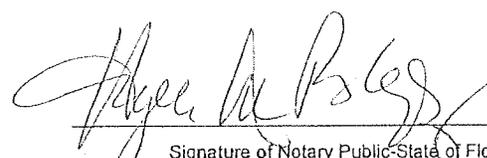
### CERTIFICATION

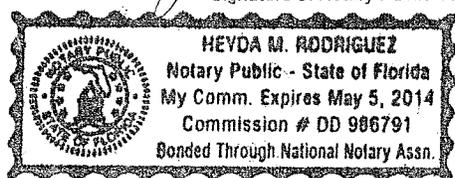
#### STATE OF FLORIDA, COUNTY OF

Before me, the undersigned Notary Public of Florida, personally appeared Leslie B. Daniels, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

  
Signature of Applicant-Affiant

Sworn to and subscribed before me  
this 16th day of May, 2011

  
Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 5/5/14

Personally Known  OR Produced Identification   
Type of Identification Produced Driver license

(seal)

RECEIVED  
JUN 15 2011

2011 JUN 15 AM 9:31

DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

---

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0158

*Amended*

1280

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

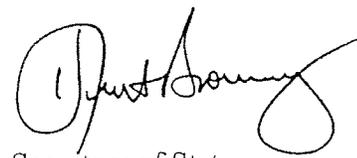
I, Kurt S. Browning, Secretary of State,  
do hereby certify that

***Gary C. Wendt***

is duly appointed a member of the  
**Investment Advisory Council**

for a term beginning on the  
Fifteenth day of November, A.D., 2011,  
until the Twelfth day of December, A.D., 2015  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Thirtieth day of January, A.D., 2012.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



**RICK SCOTT**  
GOVERNOR

2012 JAN 23 PM 4:26

STATE  
DEPARTMENT OF ELECTORALS

January 19, 2012

Mr. Kurt S. Browning, Secretary  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 215.444, Florida Statutes:

Mr. Gary C. Wendt  
3055 Harbor Drive  
Fort Lauderdale, Florida 33316

as a member of the Investment Advisory Council, a newly created position, subject to confirmation by the Senate. This appointment is effective November 15, 2011, for a term ending December 12, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/lm

THE CABINET  
STATE OF FLORIDA

---

Representing:

STATE BOARD OF ADMINISTRATION  
DEPARTMENT OF LAW ENFORCEMENT  
BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before  
THE FLORIDA CABINET, Honorable Governor Scott  
presiding, in the Cabinet Meeting Room, LL-03,  
The Capitol, Tallahassee, Florida, on Tuesday,  
November 15, 2011, commencing at 9:05 a.m.

Reported by:  
JO LANGSTON  
Registered Professional Reporter  
Notary Public

ACCURATE STENOTYPE REPORTERS, INC.  
2894 REMINGTON GREEN LANE  
TALLAHASSEE, FLORIDA 32308  
(850) 878-2221

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

2012 JAN 17 AM 9:16

RECEIVED  
DEPARTMENT OF STATE

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT  
Governor

ADAM H. PUTNAM  
Commissioner of Agriculture

PAM BONDI  
Attorney General

JEFF ATWATER  
Chief Financial Officer

\* \* \*

1           6 is withdrawn without objection.

2           MR. WILLIAMS: Thank you. Item 7, request  
3 approval of the appointment of Mr. Michael Price to  
4 the Investment Advisory Council.

5           GOVERNOR SCOTT: Is there a motion to approve  
6 Item 7?

7           ATTORNEY GENERAL BONDI: Move to approve.

8           CFO ATWATER: Second.

9           GOVERNOR SCOTT: Moved and seconded. Item 7 is  
10 approved without objection.

11           MR. WILLIAMS: Thank you. Item 8, request  
12 approval of the appointment of Gary Wendt, Mr. Gary  
13 Wendt, to the Investment Advisory Council.

14           GOVERNOR SCOTT: Is there a motion?

15           ATTORNEY GENERAL BONDI: Move to approve.

16           GOVERNOR SCOTT: Is there a second?

17           CFO ATWATER: Second.

18           GOVERNOR SCOTT: Moved and seconded. Item 8 is  
19 approved without objection.

20           MR. WILLIAMS: Thank you.

21           GOVERNOR SCOTT: Thank you very much.

22

23

24

25

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Broward

2012 JUN 17 PM 4:36

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Member- Investment Advisory Council  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

G C Wendt  
Signature

Sworn to and subscribed before me this 20 day of DECEMBER, 2011.

Rose Ann Tarasuk  
Signature of Officer Administering Oath or of Notary Public

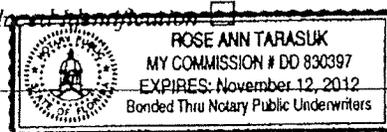
ROSE ANN TARASUK

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR

Produced Identification

Type of Identification Produced



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

3055 Harbor Drive

Street or Post Office Box

Ft Lauderdale, Fla. 33316

City, State, Zip Code

GARY C. WENDT  
Print name as you desire commission issued

G C Wendt  
Signature

# QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

RECEIVED  
2012 JAN 7 PM 4:36  
STATE DIVISION OF ELECTIONS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

1. Name: MR. WENDT GARY CARL  
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 3055 HARBOR DRIVE FT. LAUDERDALE  
STREET OFFICE # CITY  
FLA 33316 954-523-2945  
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 3055 HARBOR DRIVE FT LAUDERDALE BROWARD  
STREET CITY COUNTY  
FLA. 33316 954 523-2945  
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business  Residence  Fax # 954-527-0952  
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>3055 Harbor Drive</u>	<u>Ft Lauderdale, Fla</u>	<u>2010</u>	<u>Present</u>
<u>39 Wilshire Rd</u>	<u>Greenwich, Ct.</u>	<u>2002 -</u>	<u>2010</u>

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

*\* Also see other side*

ADDRESS	CITY & STATE	FROM	TO
<u>39 Wilshire Rd.</u>	<u>Greenwich, Ct</u>	<u>2002 -</u>	<u>2010</u>
		<u>1997 -</u>	<u>2000</u>
<u>Erskine Road</u>	<u>Indianapolis Ind.</u>	<u>2000 -</u>	<u>2002</u>
	<u>Stamford Ct</u>	<u>1995 -</u>	<u>1997</u>

5. Date of Birth: \_\_\_\_\_ Place of Birth: Portage, Wisconsin

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: FLA

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain \_\_\_\_\_

9. Are you a United States citizen? Yes  No  If "No" explain:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 2010

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of registration: Broward B. Current party affiliation: Republican

12. Education

A. High School: Bio High, Rio Wisconsin Year Graduated: 1960  
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

<small>NAME &amp; LOCATION</small>	<small>DATES ATTENDED</small>	<small>CERTIFICATES/DEGREES RECEIVED</small>
<u>Univ of Wisc. - Madison, Wisc.</u>	<u>1960-1965</u>	<u>BS - Civ. Eng</u>
<u>Harvard Grad School of Business, Cambridge, Mass</u>	<u>1965-1967</u>	<u>MBA</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of service: \_\_\_\_\_

B. Branch or component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

<small>DATE</small>	<small>PLACE</small>	<small>NATURE</small>	<small>DISPOSITION</small>
<u>NO</u>			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<small>EMPLOYER'S NAME &amp; ADDRESS</small>	<small>TYPE OF BUSINESS</small>	<small>OCCUPATION/JOB TITLE</small>	<small>PERIOD OF EMPLOYMENT</small>
<u><del>GE Capital</del></u>	<u><del>Financial Services</del></u>	<u><del>Vice President/CEO</del></u>	<u><del>1995-1999</del></u>
<u>Self Employed</u>	<u>since</u>	<u>2002</u>	

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No  If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<small>POSITION</small>	<small>EMPLOYING AGENCY</small>	<small>PERIOD OF EMPLOYMENT</small>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Thirty five years in financial services including REITS, Consumer & commercial finance, leasing, investment banking & insurance. CEO of Major financial services and publically held lending & insurance Co (Fortune 500 size). Chmn. of finance committee of public company. Creator of Private Equity and SBIC lending companies

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

MBA - Harvard Graduate School of Business

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

Multiple major magazine and newspaper articles during late 1980's and 1990's.

D. Identify all association memberships and association offices held by you that relate to this appointment:

NONE

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE DATE OF ELECTION OR APPOINTMENT TERM OF OFFICE LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: \_\_\_\_\_

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_

B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

A. Title of Office: \_\_\_\_\_

B. Term of Appointment: \_\_\_\_\_

C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
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26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
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27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	CITY	STATE	ZIP CODE	AREA CODE/PHONE NUMBER
Abigail Thierman	7925 SE Ave	Miami	FL	33131	561 962 7907
Goings, Rick	PO Box 2353	Orlando	FL	32802	407 826 8484
Julian Eifenbica	2500 E Las Olas	Ft Lauderdale	FL	33316	954 463-1400

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
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NONE

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29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

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30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

2012 JAN 17 PM 4:36

FLORIDA STATE  
DIVISION OF ELECTIONS

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

---

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0158

CERTIFICATION

2012 JAN 17 PM 4:36  
FLORIDA STATE DEPARTMENT OF ELECTIONS

STATE OF FLORIDA, COUNTY OF

Before me, the undersigned Notary Public of Florida, personally appeared GARY C. WENDT, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

G C Wendt  
Signature of Applicant-Affiant

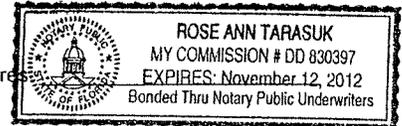
Sworn to and subscribed before me  
this 20 day of DECEMBER, 2011.

Rose Ann Tarasuk  
Signature of Notary Public-State of Florida

ROSE ANN TARASUK

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires



Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

(seal)

1395

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

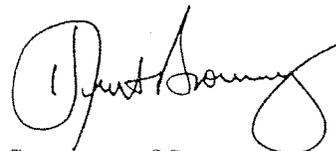
I, Kurt S. Browning, Secretary of State,  
do hereby certify that

***Barbara T. Scott***

is duly appointed a member of the  
**Participant Local Government Advisory  
Council**

for a term beginning on the  
Sixth day of December, A.D., 2011,  
until the Thirteenth day of January, A.D., 2013  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Seventeenth day of January, A.D., 2012.*



Secretary of State

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF <sup>Georgia</sup> ~~FLORIDA~~

County of Union

2012 JAN 17 PM 4:37

UNION COUNTY ELECTORALS

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

PLGAC

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

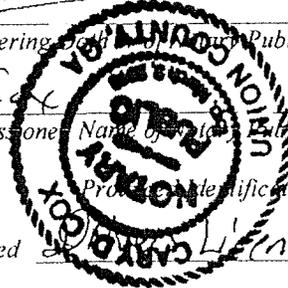
Sworn to and subscribed before me this 21<sup>st</sup> day of December, 2011.

[Signature]  
Signature of Officer Administering Oath

Cary D. Cox  
Print, Type, or Stamp Commissioner Name of State

Personally Known  OR  Professional Identification

Type of Identification Produced Driver's License



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

350 E MARION AVE  
Street or Post Office Box

Punta Gorda, FL 33950  
City, State, Zip Code

Barbara T. Scott  
Print name as you desire commission issued

[Signature]  
Signature



STATE BOARD OF ADMINISTRATION  
OF FLORIDA

1801 HERMITAGE BOULEVARD  
TALLAHASSEE, FLORIDA 32308  
(850) 488-4406

POST OFFICE BOX 13300  
32317-3300

2012 JAN 17 PM 4:34

DIVISION OF ELECTIONS

RICK SCOTT  
GOVERNOR  
CHAIRMAN  
JEFF ATWATER  
CHIEF FINANCIAL OFFICER  
TREASURER  
M. BOND  
ATTORNEY GENERAL  
AS SECRETARY  
ASH WILLIAMS  
EXECUTIVE DIRECTOR & CIO

January 17, 2012

Inez Williams  
Division of Elections  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399

RE: Participant Local Government Advisory Council – Barbara Scott

Dear Ms. Williams:

Ms. Barbara Scott has been appointed by Attorney General Bondi to serve on the Participant Local Government Advisory Council for the State Board of Administration. Attached please find a copy of Questionnaire for Senate Confirmation and the December 6, 2011, Cabinet transcript reflecting approval of his appointment (Pages 131-132). Her term will be December 6, 2011, through January 13, 2013, as she is filling the term of Karen Nicolai.

Please let me know if additional information is required.

Sincerely,

Diane Bruce  
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments  
Mr. Ron Poppell w/o Attachments

**HAND DELIVERED**

# QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

12/19/2011

			Date Completed
1. Name:	Mrs. Scott Barbara		T.
	MR./MRS./MS.                      LAST                      FIRST                      MIDDLE/MAIDEN		
2. Business Address:	350 E. Marion Ave		Punta Gorda
	STREET                      OFFICE #                      CITY		
	Florida	33950	941-637-2329
	POST OFFICE BOX                      STATE                      ZIP CODE                      AREA CODE/PHONE NUMBER		
3. Residence Address:	22430 Albany Ave.	Port Charlotte	Charlotte
	STREET                      CITY                      COUNTY		
	Florida	33952	941-625-0795
	POST OFFICE BOX                      STATE                      ZIP CODE                      AREA CODE/PHONE NUMBER		
Specify the preferred mailing address:	Business <input checked="" type="radio"/>	Residence <input type="radio"/>	Fax # 941-505-4749
			(optional)

4. A. List all your places of residence for the last ten (10) years.

ADDRESS	CITY & STATE	FROM	TO
22430 Albany Ave.	Port Charlotte, Florida	1974	Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
202 Moon Shadow Trail	Blairsville, GA 30512	06/30/2005	Present
214th St Queens Village, NY	Jamaica Estates, Flushing Queens, NY	1964	1968

5. Date of Birth:	10/01/1942	Place of Birth:	Brooklyn, New York
6. Social Security Number:			
7. Driver License Number:			g State: Florida

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain

BARBARA ANNE TOMMASULO - MAIDEN NAME

BARBARA A. MATURA - MARRIED NAME

BARBARA T. (TOMMASULO) SCOTT - MARRIED NAME

9. Are you a United States citizen? Yes  No  If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1968

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of registration: Charlotte

B. Current party affiliation: REPUBLICAN

12. Education

A. High School: MARTIN VAN BUREN, QUEENS VILLAGE, NY Year Graduated: 1960

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION

DATES ATTENDED

CERTIFICATES/DIPLOMAS RECEIVED

Institute for Court Management CCEP (Certified Court Executive) ICM FELLOW 1979

Florida Association Court Clerks (FACC) - Yearly Certification Program 1984-PRESENT

FACC- University of Florida Graduate School of Business Administration Workshop 1983-1985

Edison Community College, Ft Myers - Mgmt Principles & Criminal Law 1974-75, Economics, 1981-82, Business Administration 1981-82

New School for Social Research, Language Classes, Greenwich Village, NY 1963

N.C.R. (National Cash Register) Business School NY, NY 1960

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of service:

B. Branch or component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE

PLACE

NATURE

DISPOSITION

No/none

15. Concerning your current employer and for all of your employment during the last ten years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
State of Florida	Government	Clerk of the Circuit Court and County Comptroller	1985-Present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
 If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
Clerk of the Circuit Court and County Comptroller - Charlotte County		1985 - Present
Chief Deputy - Clerk of the Circuit Court - Charlotte County		August 1975 to June 1984
County Court Coordinator - Court Administrator's Office, 20th Judicial Circuit		October 1973 to August 1975
Case Disposition Clerk - State Court Administrator's Office - State of Florida		February 1973 to October 1973

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.  
 For over 27 years, in my position as Clerk of the Circuit Court and Comptroller for Charlotte County Florida, I have supervised the investment and cash management functions of the County.  
 In this role, I review and approve the investment policies, procedures and internal controls related to investments. During my years serving in this capacity, managing a portfolio from 100 million to 450 million, the County has earned over 210 million in interest. In addition, as Clerk of the Circuit Court, I am responsible for managing the costs of employee benefits locally and those administered by the Florida Retirement System.

- B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

- C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No   
 If "Yes", list:

Government Finance Officers Association of the United States and Canada,  
 Certificate of Achievement for Excellence in Financial Reporting for 25 consecutive years.

D. Identify all association memberships and association offices held by you that relate to this appointment:

- Government Finance Officers Association of US and Canada (GFOA)
- Florida Government Finance Officers Association (FGFOA)
- International Association Clerks and Recorders, Election Officials and Treasure (CREOT)
- Florida Association of Court Clerks and Comptroller (FACC)

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?  
 Yes  No  If "Yes", list:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
Clerk of the Circuit Court and County Comptroller	January 1985 - Present		County
Florida Committee on Privacy and Court Records	2004-2005		State Supreme Court of Florida
Florida Courts Electronic Filing Committee (FCTC)	2001-2003		State Supreme Court of Florida
Florida Courts Technology Commission (FCTC)	1999-2003		State Supreme Court of Florida
Florida Courts Technology Users Committee (FCTC)	1996-1999		State Supreme Court of Florida

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: monthly, quarterly, or as needed.

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, F.S.? Yes  No  If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

- A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_  
 B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No   
 If "Yes", list:

A. Title of Office: \_\_\_\_\_

B. Term of Appointment: \_\_\_\_\_

C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No   
 If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
JUDGE PAUL ALESSANDRONI			
COMM ROBERT STARR C			
DIANE D'ANDREA			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
FACC, FLORIDA ASSOCIATION OF COURT CLERKS AND COMPTROLLERS.	3544 Maclay Blvd Tallahassee, FL	32312	1985 - Present
KIWANIS CLUB OF PUNTA GORDA	P.O. BOX 51077 PUNTA GORDA, FL.	33951	March 1990 - Present
PEACE RIVER WOMENS FEDERATED REPUBLICAN FORUM	PO BOX 511985 PG FL	33951	1990 - Present
SALVATION ARMY, CHAR CORPS, ADVISORY BOARD	2120 LOVELAND BLVD PUNTA GORDA, FL	33980	1995-PRESENT

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

CERTIFICATION

Georgia  
STATE OF FLORIDA, COUNTY OF Union

2012 JAN 17 PM 4:37

Before me, the undersigned Notary Public of Florida, personally appeared BARBARA T. SCOTT, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

*Barbara T. Scott*

Signature of Applicant-Affiant

Sworn to and subscribed before me  
this 21<sup>st</sup> day of December, 2011.

*Cary D. Cox*  
Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: \_\_\_\_\_

Personally Known  OR Produced Identification

Type of Identification Produced Drivers License

(seal)

MEMORANDUM

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AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

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IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0158