

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

MEETING DATE: Tuesday, April 9, 2013
TIME: 4:00 —6:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bean, Benacquisto, Bradley, Hukill, Montford, Simmons, and Smith

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
1	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.		
	Participant Local Government Advisory Council		
	Belden, Douglas R. (Tampa)	01/12/2017	Recommend Confirm Yeas 8 Nays 0
	Price, Gary B., Jr. (Naples)	01/12/2017	Recommend Confirm Yeas 8 Nays 0
	Lovoy, Amy (Pensacola)	01/12/2017	Recommend Confirm Yeas 8 Nays 0
	Heffner, Patsy (Kissimmee)	01/12/2017	Recommend Confirm Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	SB 1806 Environmental Preservation and Conservation (Similar H 7113)	Total Maximum Daily Loads; Exempting total maximum daily load rules from legislative ratification, etc. GO 04/09/2013 Favorable	Favorable Yeas 7 Nays 0
3	SB 824 Garcia (Identical H 1183)	Public Records/Forensic Behavioral Health Evaluation; Creating an exemption from public records requirements for a forensic behavioral health evaluation filed with a court; providing a definition for the term "forensic behavioral health evaluation"; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, applicability, and construction, etc. CJ 03/18/2013 Favorable GO 04/09/2013 Fav/CS RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Tuesday, April 9, 2013, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1014 Garcia (Identical H 1185)	Public Records/ Participants in Treatment-based Drug Court Programs; Exempting from public records requirements the initial screenings for a treatment-based drug court program, substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports regarding a participant in a treatment-based drug court program; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 03/12/2013 Favorable GO 04/09/2013 Fav/CS RC	Fav/CS Yeas 8 Nays 0
5	CS/SB 1734 Criminal Justice / Flores (Similar H 1327, Compare CS/H 1325, Link CS/S 1644)	Public Records/Victims of Human Trafficking; Providing an exemption from public records requirements for criminal history records of victims of human trafficking expunged under s. 943.0583, F.S.; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CJ 04/01/2013 Fav/CS GO 04/09/2013 Fav/CS RC	Fav/CS Yeas 6 Nays 0
6	CS/SB 606 Transportation / Gibson (Similar CS/CS/H 345)	Northeast Florida Regional Transportation Commission; Creating the commission; providing for transportation projects of regional significance; exempting the commission from taxes or assessments; specifying that the commission is not an authority for purposes of specified provisions relating to a discretionary tax, etc. TR 03/21/2013 Fav/CS CA 04/02/2013 Favorable GO 04/09/2013 Favorable	Favorable Yeas 7 Nays 1
7	CS/SB 1122 Community Affairs / Simpson (Similar CS/CS/H 971)	Florida Fire Prevention Code; Providing that certain authorities in rural areas or small communities may decrease fire flow requirements; providing that fire officials shall enforce Florida Building Code provisions for occupancy separation for certain structures with certain occupancies; exempting certain farming and ranching structures from the code, etc. CA 03/20/2013 Not Considered CA 04/02/2013 Fav/CS GO 04/09/2013 Fav/CS RC	Fav/CS Yeas 7 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1080 Evers (Similar CS/CS/H 269)	Public Construction Projects; Requiring state agencies to use a sustainable building rating system for construction and renovation projects; requiring state agencies and other entities to specify certain products associated with public works projects, etc. GO 04/09/2013 Fav/CS CA AGG AP	Fav/CS Yeas 7 Nays 0
9	SB 1424 Evers (Similar CS/H 1333)	Public Records/Personal Identifying Information/Department of Transportation; Providing that personal identifying information about individuals related to the payment of tolls, which is held by the Department of Transportation and certain other entities, is exempt from public records requirements; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing legislative findings and a statement of public necessity, etc. TR 03/14/2013 Favorable GO 04/09/2013 Favorable RC	Favorable Yeas 7 Nays 0
10	SB 1848 Banking and Insurance (Link CS/S 1770)	Public Records/Inspector General/Citizens Property Insurance Corporation; Providing a public records exemption for the identity of individuals who make certain allegations or provide certain information to the inspector general of Citizens Property Insurance Corporation and for information relating to a resulting investigation; providing for future review and repeal; providing a statement of public necessity, etc. GO 04/09/2013 Favorable RC	Favorable Yeas 8 Nays 0
11	SB 1850 Banking and Insurance (Similar H 7095, S 1606, Compare CS/H 7093, S 1622, Link CS/S 1770)	Public Records/Citizens Property Insurance Corporation Clearinghouse; Providing an exemption from public records requirements for all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program; providing for future review and repeal; providing a statement of public necessity, etc. GO 04/09/2013 Favorable RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 834 Banking and Insurance / Simmons (Similar CS/CS/H 823, Compare CS/CS/H 821, Link CS/S 836)	Public Records/Proprietary Business Information/Office of Insurance Regulation; Creating an exemption from public records requirements for proprietary business information submitted to the Office of Insurance Regulation; defining the term "proprietary business information," etc. BI 04/02/2013 Fav/CS GO 04/09/2013 Favorable RC	Favorable Yeas 8 Nays 0
13	CS/SB 1276 Education / Montford (Similar CS/CS/H 359)	Public Meetings/University Direct-support Organizations; Providing an exemption from public meeting requirements for certain portions of meetings of a university direct-support organization or of the executive committee or other committees of the board of directors of such organization; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. ED 03/18/2013 Fav/CS GO 04/09/2013 Fav/CS EE RC	Fav/CS Yeas 8 Nays 0
14	SB 1756 Montford (Similar H 7089, Compare CS/H 7087, Link CS/S 1628)	Public Records/Applicants or Participants School Food and Nutrition Service Programs; Providing an exemption from public records requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education; providing for specified disclosure; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act, etc. AG 03/18/2013 Favorable GO 04/09/2013 Fav/CS RC	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Tuesday, April 9, 2013, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	CS/SB 242 Banking and Insurance / Hukill (Similar CS/H 383)	Interstate Insurance Product Regulation Compact; Providing for establishment of an Interstate Insurance Product Regulation Commission; specifying the commission as an instrumentality of the compacting states; designating the Commissioner of Insurance Regulation as the representative of the state on the commission; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; exempting the commission from all taxation, except as otherwise provided, etc. BI 03/20/2013 Not Considered BI 04/02/2013 Fav/CS GO 04/09/2013 Fav/CS AGG AP	Fav/CS Yeas 8 Nays 0
16	CS/SB 1260 Ethics and Elections / Ring (Similar CS/H 249, Compare CS/CS/H 247, Link CS/S 1352)	Public Records/E-mail Addresses/Voter Registration Applicants; Providing an exemption from public records requirements for the e-mail addresses of voter registration applicants and voters; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. EE 03/11/2013 Fav/CS GO 04/09/2013 Favorable RC	Favorable Yeas 8 Nays 0
17	SB 1696 Brandes (Compare CS/H 1225)	Administrative Procedures; Providing that the agency has the burden of proof in proceedings challenging the validity of existing rules and unadopted agency statements; removing certain exceptions from requirements that attorney fees and costs be rendered against the agency in proceedings in which the petitioner prevails in a challenge to an unadopted agency statement; authorizing any party to request mediation of rule challenge and declaratory statement proceedings, etc. GO 04/09/2013 Fav/CS JU AP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

1395

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Douglas R. Belden

is duly appointed a member of the
**Participant Local Government
Advisory Council**

for a term beginning on the
Seventh day of March, A.D., 2013,
until the Twelfth day of January, A.D., 2017
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 Twenty-First day of March, A.D., 2013.*



Ken Detzner

Secretary of State

DSDE 99 (3/03)

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

1027

HAND DELIVERED



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RECEIVED
13 MAR 20 PM 3:44
DIVISION OF ELECTIONS
SECRETARY OF STATE

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER
PAM BONDI
ATTORNEY GENERAL
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

March 20, 2013

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 – Doug Belden

Dear Ms. Williams:

Mr. Doug Belden has been appointed by Attorney General Pam Bondi to serve on the Participant Local Government Advisory Council for the State Board of Administration. Attached please find the appointment letter, copy of Questionnaire for Senate Confirmation, and the March 7, 2013 Cabinet Transcript reflecting approval of his appointment. Mr. Belden will be filling the term vacated by Ms. Barbara Scott, therefore, his term will be from March 7, 2013 through January 12, 2017.

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
- Mr. Mike McCauley w/o Attachments

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

STATE BOARD OF ADMINISTRATION

ADMINISTRATION COMMISSION

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Thursday, March 7,
2013, commencing at approximately 9:15 a.m.

Reported by:

MARY ALLEN NEEL

Registered Professional Reporter
Florida Professional Reporter
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E XSTATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	4
2	Approved	5
3	Approved	6

ADMINISTRATION COMMISSION
(Presented by MARK KRUSE)

ITEM	ACTION	PAGE
1	Approved	7
2	Approved	26
3	Approved	26
4	Withdrawn	27

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
(Presented by HERSCHEL VINYARD)

ITEM	ACTION	PAGE
1	Approved	28
2	Approved	36
3	Approved	38
4	Approved	39
5	Approved	40
6	Withdrawn	40
7	Approved	41
8	Approved	45
9	Approved	45

FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
(Presented by BELINDA MILLER)

ITEM	ACTION	PAGE
1	Approved	48
2	Withdrawn	49
3	Withdrawn	49

CERTIFICATE OF REPORTER		50
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P R O C E E D I N G S

(The agenda items commenced at 9:57 a.m.)

GOVERNOR SCOTT: All right. Now I would like to recognize Executive Director Ash Williams with the State Board of Administration. Good morning, Ash.

MR. WILLIAMS: Good morning, Governor and Trustees.

And thank you, by the way, for the support on the tourism. That's wonderful. Keep in mind the pension fund owns hotels, restaurants, et cetera. We appreciate the business, the revenue, all that good stuff.

By way of update, as of the close on March 5, the Florida Retirement System Trust Fund was up 11.74 percent fiscal year to date. That's 35 basis points ahead of target and left us with a balance of \$132.6 billion.

Item 1, request approval of the minutes of our December 11 and January 23 meetings.

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: That was fast. Any comments or objections? Hearing none, the motion carries.

1 MR. WILLIAMS: Thank you. Item 2, request
2 approval of a draft letter certifying the Trustees
3 have reviewed the Auditor General's Annual
4 Financial Report of the Local Government Surplus
5 Funds Trust Fund. The Auditor General did not
6 report any material findings, but did identify a
7 compliance issue on which we agreed and have
8 implemented a corrective action plan. Request
9 approval.

10 GOVERNOR SCOTT: Is there a motion to approve?

11 CFO ATWATER: So moved.

12 GOVERNOR SCOTT: Is there a second?

13 ATTORNEY GENERAL BONDI: Second.

14 GOVERNOR SCOTT: Any comments or objections?
15 Hearing none, the motion carries.

16 MR. WILLIAMS: Thank you. Item 3, request
17 approval of several appointments to the Participant
18 Local Government Advisory Council. These include
19 Amy Lavoy, Director of Management and Budget for
20 Escambia County; Gary Price, founder and principal
21 of Fifth Avenue Advisors, Naples, Florida; Doug
22 Belden, Hillsborough County Tax Collector; and the
23 reappointment of Patsy Heffner, Osceola County Tax
24 Collector.

25 GOVERNOR SCOTT: All right. Is there a motion

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to approve?

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: Any comments or objections?

Hearing none, the motion carries.

MR. WILLIAMS: Thank you.

GOVERNOR SCOTT: Thanks, Ash.



RECEIVED
13 MAR 20 PM 3:44
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

February 15, 2013

Mr. Ash Williams
Executive Director
State Board of Administration
1801 Hermitage Boulevard
Tallahassee, FL 32308

Dear Mr. Williams:

This letter is to inform you of the appointment of Doug Belden as my designee to the State Board of Administration Participant Local Government Investment Advisory Council, effective immediately.

His contact information is listed below.

Doug Belden
Hillsborough County Tax Collector
601 E Kennedy Blvd
Tampa, FL 33602
Telephone: (813) 635-5200
Cell: (813) 220-3222
Email: dbtax@verizon.net

Sincerely,

Pam Bondi
Attorney General

cc: Doug Belden
Governor Rick Scott
Chief Financial Officer Jeff Atwater

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by 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 blue or black ink.

13 MAR 20 PM 3:44
02/21/2013

DIVISION OF ELECTIONS
SECRETARY OF STATE

1. Name: Mr. Belden Douglas Ray
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 601 E. Kennedy Blvd., 14th Floor Tampa
Street Office # City
Florida 33602 813.612.6701
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 1128 Shipwatch Cir. Tampa Hillsborough
Street City County
Florida 33602 813.220.3222
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business Residence Fax # 813.612.6743
(optional)

4. A. List all your places of residence for the last five (5) years.

<u>Address</u>	<u>City & State</u>	<u>From</u>	<u>To</u>
1128 Shipwatch Cir.	Tampa, FL	2001 to the present	

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

<u>Address</u>	<u>City & State</u>	<u>From</u>	<u>To</u>
N/A			

5. Date of Birth: 09/16/1954 Place of Birth: Tampa, FL

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? 09/16/1954

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: Hillsborough B. Current Party Affiliation: Republican

12. Education

A. High School: Tampa Catholic Highschool Year Graduated: 1972
(Name and Location)

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>University of South Florida</u>	<u>1972-1976</u>	<u>Bachelors in Anthopology</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.) Yes No If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</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.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>Hillsborough County Tax Collector</u>	<u>Government</u>	<u>Tax Collector</u>	<u>11/1998</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:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>Tax Collector</u>	<u>Hillsborough County</u>	<u>15 years</u>
<u>Elderly Abuse Task Force</u>	<u>State Attorney's Office</u>	<u>1.5 years</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

As Tax Collector, my office collects and distributes 2 billion dollars annually and have never had a negative audit finding.

Our organization has received Financial Excellence award from the Florida Tax Collector's Association for the last two years.

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:

Certified Florida Tax Collector

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes No If "Yes", list:

Florida Tax Collector's Association - Financial Excellence Award (2 time)

Governor's Sterling Award Recipient (2008)

Governor's Sterling Sustainability Award (2010)

Florida Tax Collector's Legislative Award (2000)

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Sterling Council Foundation, Co-Chair

Florida Sterling Council Board Member

Past Vice President, President of Florida Tax Collector's Association

FBI Citizen's Academy Graduate, 2011

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):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
Hillsborough County Tax Collector - November 1998		4 years	State Constitutional Officer
Tampa Sports Authority Board Member - 1994		3 years	Local

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Monthly

(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).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>

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:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

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, disharment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title & Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
Florida Real Estate Broker (Inactive)	2/23/1987	Florida Department of Business/Professional Reg	

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:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>

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>
State Attorney Mark Ober -			
Sheriff David Gee -			
US Attorney Robert O'Neill -			

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 & Term</u>	<u>Date(s) of Membership</u>
Florida Tax Collectors Association -	P.O. Box 1833 Tallahassee, FL	32302-1833 - Member -	1998 through present
Florida Sterling Council -	PO Box 13907 Tallahassee, FL	32317-3907 - Board Member -	2008 through present
FBI Citizen's Academy Graduate -	5525 W. Gray Street Tampa, FL	33609 - Graduate -	2011
Honorary Deputy Sheriff -	P.O. Box 3371 Tampa, FL	33601	2001 through 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

MEMORANDUM

RECEIVED
13 MAR 20 PM 3:51

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 the Public Records Law.

Because: (please provide cite.) _____

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) 245-0150

CERTIFICATION

RECEIVED
13 MAR 20 PM 3:51

DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA
COUNTY OF Hillsborough

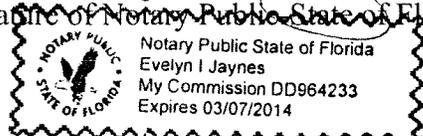
Before me, the undersigned Notary Public of Florida, personally appeared

_____,
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]
Signature of Applicant-Affiant

Sworn to and subscribed before me this 22 day of February, 2013

[Signature]
Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 3/7/14

Personally Known OR Produced Identification

Type of Identification Produced _____

(seal)

1395

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Gary B. Price, Jr.

is duly appointed a member of the
**Participant Local Government
Advisory Council**

for a term beginning on the
Seventh day of March, A.D., 2013,
until the Twelfth day of January, A.D., 2017
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 Twenty-First day of March, A.D., 2013.*



Ken Detzner
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.



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RECEIVED

13 MAR 20 PM 3:42

DIVISION OF ELECTIONS
SECRETARY OF STATE

HAND DELIVERED

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER

RONDI
ATTORNEY GENERAL
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

March 20, 2013

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 – Gary Price

Dear Ms. Williams:

Mr. Gary Price has been appointed by CFO Jeff Atwater to serve on the Participant Local Government Advisory Council for the State Board of Administration. Attached please find the appointment letter, copy of Questionnaire for Senate Confirmation, and the March 7, 2013 Cabinet Transcript reflecting approval of his appointment. Mr. Price's term will be March 7, 2013 through January 12, 2017.

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
Mr. Ron Poppell w/o Attachments
Mr. Mike McCauley w/o Attachments

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

STATE BOARD OF ADMINISTRATION
ADMINISTRATION COMMISSION
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Thursday, March 7,
2013, commencing at approximately 9:15 a.m.

Reported by:

MARY ALLEN NEEL
Registered Professional Reporter
Florida Professional Reporter
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E XSTATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	4
2	Approved	5
3	Approved	6

ADMINISTRATION COMMISSION
(Presented by MARK KRUSE)

ITEM	ACTION	PAGE
1	Approved	7
2	Approved	26
3	Approved	26
4	Withdrawn	27

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
(Presented by HERSCHEL VINYARD)

ITEM	ACTION	PAGE
1	Approved	28
2	Approved	36
3	Approved	38
4	Approved	39
5	Approved	40
6	Withdrawn	40
7	Approved	41
8	Approved	45
9	Approved	45

FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
(Presented by BELINDA MILLER)

ITEM	ACTION	PAGE
1	Approved	48
2	Withdrawn	49
3	Withdrawn	49

CERTIFICATE OF REPORTER		50
-------------------------	--	----

P R O C E E D I N G S

(The agenda items commenced at 9:57 a.m.)

GOVERNOR SCOTT: All right. Now I would like to recognize Executive Director Ash Williams with the State Board of Administration. Good morning, Ash.

MR. WILLIAMS: Good morning, Governor and Trustees.

And thank you, by the way, for the support on the tourism. That's wonderful. Keep in mind the pension fund owns hotels, restaurants, et cetera. We appreciate the business, the revenue, all that good stuff.

By way of update, as of the close on March 5, the Florida Retirement System Trust Fund was up 11.74 percent fiscal year to date. That's 35 basis points ahead of target and left us with a balance of \$132.6 billion.

Item 1, request approval of the minutes of our December 11 and January 23 meetings.

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: That was fast. Any comments or objections? Hearing none, the motion carries.

1 MR. WILLIAMS: Thank you. Item 2, request
2 approval of a draft letter certifying the Trustees
3 have reviewed the Auditor General's Annual
4 Financial Report of the Local Government Surplus
5 Funds Trust Fund. The Auditor General did not
6 report any material findings, but did identify a
7 compliance issue on which we agreed and have
8 implemented a corrective action plan. Request
9 approval.

10 GOVERNOR SCOTT: Is there a motion to approve?

11 CFO ATWATER: So moved.

12 GOVERNOR SCOTT: Is there a second?

13 ATTORNEY GENERAL BONDI: Second.

14 GOVERNOR SCOTT: Any comments or objections?

15 Hearing none, the motion carries.

16 MR. WILLIAMS: Thank you. Item 3, request
17 approval of several appointments to the Participant
18 Local Government Advisory Council. These include
19 Amy Lavoy, Director of Management and Budget for
20 Escambia County; Gary Price, founder and principal
21 of Fifth Avenue Advisors, Naples, Florida; Doug
22 Belden, Hillsborough County Tax Collector; and the
23 reappointment of Patsy Heffner, Osceola County Tax
24 Collector.

25 GOVERNOR SCOTT: All right. Is there a motion

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to approve?

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: Any comments or objections?

Hearing none, the motion carries.

MR. WILLIAMS: Thank you.

GOVERNOR SCOTT: Thanks, Ash.

Ms. Virlindia Doss, Executive Director

March 27, 2013

Page 2

Set 32

EXECUTIVE APPOINTMENTS
REFERRED TO
THE FLORIDA COMMISSION ON ETHICS

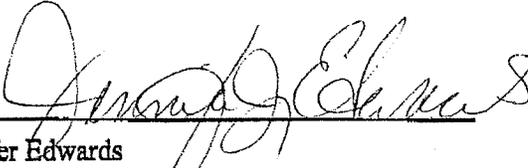
- 1) Douglas R. Belden Complaint No. 06-032
- 2) Ronald M. Bergeron
- 3) Bryan K. Beswick
- 4) Patsy Heffner
- 5) Amy Lovoy
- 6) Marjorie T. Moore
- 7) Gary B. Price, Jr.
- 8) Adrien A. Rivard, III

The Honorable Jennifer Edwards
March 27, 2013
Page 2

EXECUTIVE APPOINTMENTS

Please indicate whether or not the persons listed are registered to vote in your county.
Please sign and fax this form to Daniel Brinson at (850) 487-5208.

Set	Appointee	Registered Voter
33	John Vaughn 6221 Copper Leaf Ln Naples, Florida 34116 DOB: 05/15/1933	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
32	Gary Price 3120 Leeward Lane Naples, Florida 34103 DOB: 08/23/1965	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No


Jennifer Edwards
Supervisor of Elections
Collier County



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

January 22, 2013

Mr. Gary B. Price, Jr.
Fifth Avenue Advisors
3003 Tamiami Trail North, Suite 410
Naples, FL 34103

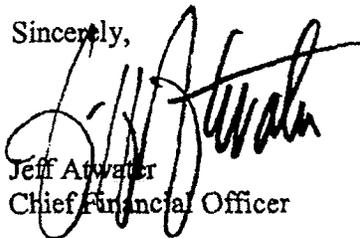
Dear Mr. Price:

It is my pleasure to appoint you to the State Board of Administration Participant Local Government Advisory Council. The purpose of the Council is to regularly review the administration of the Local Government Surplus Trust Fund and make recommendations regarding such administration to the trustees of the SBA. Your appointment is effective immediately and expires on January 12, 2017.

Ash Williams, Executive Director and CIO of the SBA, will contact you regarding your duties and responsibilities as a member.

Thank you for your willingness to serve the state of Florida in this role. I look forward to working with you.

Sincerely,


Jeff Atwater
Chief Financial Officer

/sm

c: Governor Rick Scott
Attorney General Pam Bondi

Welcome Gary!

BD #1395
Set #32

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "no" applicable when appropriate. Please type or print in blue or black ink.

13 MAR 28 AM 11:13
DIVISION OF ELECTIONS
SECRETARY OF STATE
Completed
March 25, 2013

1. Name: Mr. Price, Jr. Gary Benjamin
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 3003 Tamiami Trail North Suite 410 Naples
Street Office # City
Florida 34103 239-262-0745
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 3120 Leeward Lane Naples Collier
Street City County
Florida 34103 239-404-0731
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business Residence Fax # 239-262-2212
(optional)

4. A. List all your places of residence for the last five (5) years.

<u>Address</u>	<u>City & State</u>	<u>From</u>	<u>To</u>
3120 Leeward Lane	Naples, Florida		Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

<u>Address</u>	<u>City & State</u>	<u>From</u>	<u>To</u>
N/A			

5. Date of Birth: 08/23/1965 Place of Birth: Tacoma, Washington

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
N/A

9. Are you a United States citizen? Yes No If "No" explain:

N/A

If you are a naturalized citizen, date of naturalization: N/A

10. Since what year have you been a continuous resident of Florida? Since 1989

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: Collier

B. Current Party Affiliation: Republican

12. Education

A. High School: Granville High School, Granville Ohio
(Name and Location)

Year Graduated: 1984

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>Ohio State University; Columbus, Ohio</u>	<u>1984-1988</u>	<u>BSBA Real Estate</u>
<u>Harvard Law School; Cambridge, Massachusetts</u>	<u>2012</u>	<u>Program on Negotiation</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: N/A

B. Branch or Component: N/A

C. Date & type of discharge: N/A

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.) Yes No If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
<u>N/A</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.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>Fifth Avenue Advisors; Naples, Florida</u>	<u>Family Wealth Management</u>	<u>Managing Director</u>	<u>2006-Present</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:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>N/A</u>		

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Elected to City Council, Chair Pension Board 5 years, and Financial Advisor for 20 years.

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:

BSBA Finance- Ohio State University

Previously held Series 7 and Series 66 Securities License

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes No If "Yes", list:

N/A

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:

N/A

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):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
Councilman, Vice Mayor	September 2005-Present*	4 Years	Naples City Council

*Re-elected Feb 2010, Term Expires February 2014

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: N/A

(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).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
<u>N/A</u>		

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:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>
<u>N/A</u>		

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: N/A C. Reason for suspension: N/A

B. Date of suspension: N/A 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: N/A

B. Term of Appointment: N/A

C. Confirmation results: N/A

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes No If "Yes", explain:

N/A

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:

<u>License/Certificate Title & Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
<u>N/A</u>			

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:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>
<u>N/A</u>		

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>
N/A			

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>
N/A	

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>
Mayor John Sorey			
John Passidomo			
Craig Lyon			

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 & Term</u>	<u>Date(s) of Membership</u>
Moorings Presbyterian Church	791 Harbor Drive, Naples Florida 34103	Member	2001-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:

N/A

30. If required by law or administrative rule, will you file financial disclosure statements? Yes No

RECEIVED

CERTIFICATION

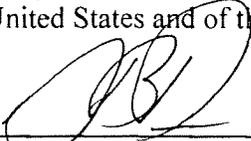
13 MAR 28 AM 11:13

STATE OF FLORIDA
COUNTY OF Collier

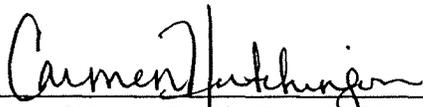
DIVISION OF ELECTIONS
SECRETARY OF STATE

Before me, the undersigned Notary Public of Florida, personally appeared

Gary B. Price, Jr.,
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.


Signature of Applicant-Affiant

Sworn to and subscribed before me this 25 day of March, 2013.

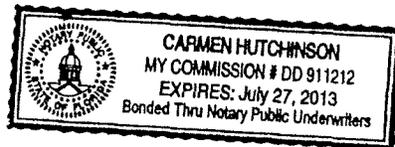

Signature of Notary Public-State of Florida

CARMEN HUTCHINSON
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: July 27, 2013

Personally Known OR Produced Identification

Type of Identification Produced _____



(seal)

RECEIVED

13 MAR 28 AM 11:13

MEMORANDUM

DIVISION OF ELECTIONS
SECRETARY OF STATE

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 the Public Records Law.

Because: (please provide cite.) _____

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) 245-0150

1395

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Amy Lovoy

is duly appointed a member of the
**Participant Local Government
Advisory Council**

for a term beginning on the
Seventh day of March, A.D., 2013,
until the Twelfth day of January, A.D., 2017
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 Twenty-Second day of March, A.D., 2013.*



Ken Detzner

Secretary of State



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RECEIVED
13 MAR 20 PM 3:42
DIVISION OF ELECTIONS
SECRETARY OF STATE

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER

PAM BONDI
ATTORNEY GENERAL
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

HAND DELIVERED

10372

March 20, 2013

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 – Amy Lovoy

Dear Ms. Williams:

Ms. Amy Lovoy has been appointed by CFO Jeff Atwater to serve on the Participant Local Government Advisory Council for the State Board of Administration. Attached please find the appointment letter, copy of Questionnaire for Senate Confirmation, and the March 7, 2013 Cabinet Transcript reflecting approval of her appointment. Ms. Lovoy term will be March 7, 2013 through January 12, 2017.

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
Mr. Ron Poppell w/o Attachments
Mr. Mike McCauley w/o Attachments

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

STATE BOARD OF ADMINISTRATION

ADMINISTRATION COMMISSION

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Thursday, March 7,
2013, commencing at approximately 9:15 a.m.

Reported by:

MARY ALLEN NEEL

Registered Professional Reporter

Florida Professional Reporter

Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.

2894 REMINGTON GREEN LANE

TALLAHASSEE, FLORIDA 32308

850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E XSTATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	4
2	Approved	5
3	Approved	6

ADMINISTRATION COMMISSION
(Presented by MARK KRUSE)

ITEM	ACTION	PAGE
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2	Approved	26
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4	Withdrawn	27

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
(Presented by HERSCHEL VINYARD)

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FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
(Presented by BELINDA MILLER)

ITEM	ACTION	PAGE
1	Approved	48
2	Withdrawn	49
3	Withdrawn	49

CERTIFICATE OF REPORTER		50
-------------------------	--	----

P R O C E E D I N G S

(The agenda items commenced at 9:57 a.m.)

GOVERNOR SCOTT: All right. Now I would like to recognize Executive Director Ash Williams with the State Board of Administration. Good morning, Ash.

MR. WILLIAMS: Good morning, Governor and Trustees.

And thank you, by the way, for the support on the tourism. That's wonderful. Keep in mind the pension fund owns hotels, restaurants, et cetera. We appreciate the business, the revenue, all that good stuff.

By way of update, as of the close on March 5, the Florida Retirement System Trust Fund was up 11.74 percent fiscal year to date. That's 35 basis points ahead of target and left us with a balance of \$132.6 billion.

Item 1, request approval of the minutes of our December 11 and January 23 meetings.

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: That was fast. Any comments or objections? Hearing none, the motion carries.

1 MR. WILLIAMS: Thank you. Item 2, request
2 approval of a draft letter certifying the Trustees
3 have reviewed the Auditor General's Annual
4 Financial Report of the Local Government Surplus
5 Funds Trust Fund. The Auditor General did not
6 report any material findings, but did identify a
7 compliance issue on which we agreed and have
8 implemented a corrective action plan. Request
9 approval.

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11 CFO ATWATER: So moved.

12 GOVERNOR SCOTT: Is there a second?

13 ATTORNEY GENERAL BONDI: Second.

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16 MR. WILLIAMS: Thank you. Item 3, request
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18 Local Government Advisory Council. These include
19 Amy Lavoy, Director of Management and Budget for
20 Escambia County; Gary Price, founder and principal
21 of Fifth Avenue Advisors, Naples, Florida; Doug
22 Belden, Hillsborough County Tax Collector; and the
23 reappointment of Patsy Heffner, Osceola County Tax
24 Collector.

25 GOVERNOR SCOTT: All right. Is there a motion

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to approve?

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: Any comments or objections?

Hearing none, the motion carries.

MR. WILLIAMS: Thank you.

GOVERNOR SCOTT: Thanks, Ash.



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

RECEIVED

13 MAR 20 PM 3:

DIVISION OF ELECT
SECRETARY OF ST.

January 22, 2013

Ms. Amy Lovoy, Department Director
Management and Budget Services
County of Escambia
221 Palafox Place
Pensacola, FL 32502

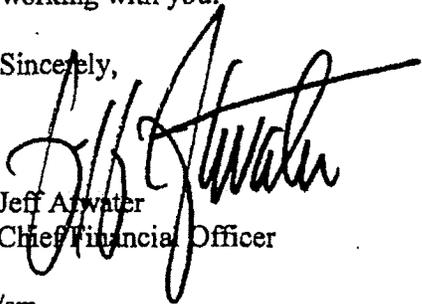
Dear Ms. Lovoy:

It is my pleasure to appoint you to the State Board of Administration Participant Local Government Advisory Council. The purpose of the Council is to regularly review the administration of the Local Government Surplus Trust Fund and make recommendations regarding such administration to the trustees of the SBA. Your appointment is effective immediately and expires on January 12, 2017.

Ash Williams, Executive Director and CIO of the SBA, will contact you regarding your duties and responsibilities as a member.

Thank you for your willingness to serve the state of Florida in this role. I look forward to working with you.

Sincerely,


Jeff Atwater
Chief Financial Officer

/sm

c: Governor Rick Scott
Attorney General Pam Bondi

Welcome Amy!

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by 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 blue or black ink.

13 MAR 28 PM 3:35/25/2013

Date Completed
DIVISION OF ELECTIONS
SECRETARY OF STATE

1. Name: Ms. Lovoy Amy L
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 221 Palafox Place, Suite 440, Pensacola
Street Office # City
Florida, 32502, 850-595-4960
Post Office Box State Zip Code Area Code/Phone Number
HAND DELIVERED

3. Residence Address: 66 Crabapple Lane, Pensacola, Escambia
Street City County
Florida, 32514, (850) 476-0923
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business Residence Fax # 850-595-4810
(optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
<u>66 Crabapple Lane, Pensacola, Florida,</u>	<u>6/1/1990</u>	<u>to present</u>	

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

5. Date of Birth: 10/14/1968 Place of Birth: Pensacola

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? _____

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: Escambia

B. Current Party Affiliation: Republican

12. Education

A. High School: Woodham High School, Pensacola, Florida
(Name and Location)

Year Graduated: 1988

B. List all postsecondary educational institutions attended:

Name & Location

Dates Attended

Certificates/Degrees Received

Huntingdon College, Montgomery, Al 1986-1990, Bachelor of Arts

University of West Florida, Pensacola, Fl, 1990-1993, Masters of Business Administration

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.) Yes No If "Yes" give details:

Date

Place

Nature

Disposition

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

Escambia County Board of County Commissioners, Government, Director, Management & Budget Services, 1996-Current

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

Escambia County Board of County Commissioners, Government, Director, Management & Budget Services, 2008-Current

Escambia County Board of County Commissioners, Government, Budget Manager, 2002-2008

Escambia County Board of County Commissioners, Government, Budget Manager, 1996-1998 and 1999-2002

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Responsible for the County's \$367,000,000 budget.

Interested in sound financial management and practices at all levels of government.

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:

Master's in Business Administration

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:

Florida Governmental Financial Officers Association (FGFOA)

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).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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:

<u>License/Certificate Title & Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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>
Brenda Chestnutt, F			
Stephan Hall, :			
Renee Broxson			

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 & Term</u>	<u>Date(s) of Membership</u>
FGFOA	P.O.Box 10270, Tallahassee, Fl 32302		
FOA	203 North LaSalle St Suite 2700, Chicago IL 60601		

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

RECEIVED

13 MAR 28 PM 3:35

STATE OF FLORIDA
COUNTY OF Escambia

DIVISION OF ELECTIONS
SECRETARY OF STATE

Before me, the undersigned Notary Public of Florida, personally appeared
Amy Lovoy

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.

Amy Lovoy
Signature of Applicant-Affiant

Sworn to and subscribed before me this 26th day of March, 2013.

Bernadette M. Gangloff
Signature of Notary Public-State of Florida

BERNADETTE M. GANGLOFF
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 5/25/15

Personally Known OR Produced Identification

Type of Identification Produced _____



(seal)

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MEMORANDUM

13 MAR 28 PM 3: 35

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 the Public Records Law.

Because: (please provide cite.) _____

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) 245-0150

1395

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Patsy Heffner

is duly appointed a member of the
**Participant Local Government
Advisory Council**

for a term beginning on the
Twelfth day of January, A.D., 2013,
until the Twelfth day of January, A.D., 2017
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 Twenty-First day of March, A.D., 2013.*



Ken Detzner

Secretary of State

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

If photocopied or chemically altered, the word "VOID" will appear.

1650
HAND DELIVERED



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RECEIVED
RICK SCOTT
GOVERNOR
AS CHAIRMAN
13 MAR 20 PM 3:43
DAVID TWATER
CHIEF FINANCIAL OFFICER

PAM BONDI
ATTORNEY GENERAL
DIVISION OF ELECTIONS
SECRETARY OF STATE
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

March 20, 2013

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 – Patsy Heffner

Dear Ms. Williams:

Ms. Patsy Heffner has been reappointed by Attorney General Pam Bondi to serve on the Participant Local Government Advisory Council for the State Board of Administration. Attached please find the reappointment letter, copy of Questionnaire for Senate Confirmation, and the March 7, 2013 Cabinet Transcript reflecting approval of her reappointment. Ms. Heffner's term will be January 12, 2013 through January 12, 2017.

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
Mr. Ron Poppell w/o Attachments
Mr. Mike McCauley w/o Attachments

THE CABINET
STATE OF FLORIDA

Representing:

STATE BOARD OF ADMINISTRATION

ADMINISTRATION COMMISSION

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Thursday, March 7,
2013, commencing at approximately 9:15 a.m.

Reported by:

MARY ALLEN NEEL

Registered Professional Reporter

Florida Professional Reporter

Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E X

STATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	4
2	Approved	5
3	Approved	6

ADMINISTRATION COMMISSION
(Presented by MARK KRUSE)

ITEM	ACTION	PAGE
1	Approved	7
2	Approved	26
3	Approved	26
4	Withdrawn	27

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
(Presented by HERSCHEL VINYARD)

ITEM	ACTION	PAGE
1	Approved	28
2	Approved	36
3	Approved	38
4	Approved	39
5	Approved	40
6	Withdrawn	40
7	Approved	41
8	Approved	45
9	Approved	45

FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
(Presented by BELINDA MILLER)

ITEM	ACTION	PAGE
1	Approved	48
2	Withdrawn	49
3	Withdrawn	49

CERTIFICATE OF REPORTER 50

P R O C E E D I N G S

(The agenda items commenced at 9:57 a.m.)

GOVERNOR SCOTT: All right. Now I would like to recognize Executive Director Ash Williams with the State Board of Administration. Good morning, Ash.

MR. WILLIAMS: Good morning, Governor and Trustees.

And thank you, by the way, for the support on the tourism. That's wonderful. Keep in mind the pension fund owns hotels, restaurants, et cetera. We appreciate the business, the revenue, all that good stuff.

By way of update, as of the close on March 5, the Florida Retirement System Trust Fund was up 11.74 percent fiscal year to date. That's 35 basis points ahead of target and left us with a balance of \$132.6 billion.

Item 1, request approval of the minutes of our December 11 and January 23 meetings.

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: That was fast. Any comments or objections? Hearing none, the motion carries.

1 MR. WILLIAMS: Thank you. Item 2, request
2 approval of a draft letter certifying the Trustees
3 have reviewed the Auditor General's Annual
4 Financial Report of the Local Government Surplus
5 Funds Trust Fund. The Auditor General did not
6 report any material findings, but did identify a
7 compliance issue on which we agreed and have
8 implemented a corrective action plan. Request
9 approval.

10 GOVERNOR SCOTT: Is there a motion to approve?

11 CFO ATWATER: So moved.

12 GOVERNOR SCOTT: Is there a second?

13 ATTORNEY GENERAL BONDI: Second.

14 GOVERNOR SCOTT: Any comments or objections?
15 Hearing none, the motion carries.

16 MR. WILLIAMS: Thank you. Item 3, request
17 approval of several appointments to the Participant
18 Local Government Advisory Council. These include
19 Amy Lavoy, Director of Management and Budget for
20 Escambia County; Gary Price, founder and principal
21 of Fifth Avenue Advisors, Naples, Florida; Doug
22 Belden, Hillsborough County Tax Collector; and the
23 reappointment of Patsy Heffner, Osceola County Tax
24 Collector.

25 GOVERNOR SCOTT: All right. Is there a motion

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to approve?

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: Any comments or objections?

Hearing none, the motion carries.

MR. WILLIAMS: Thank you.

GOVERNOR SCOTT: Thanks, Ash.



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13 MAR 20 PM 3:43

DIVISION OF COLLECTIONS
SECRETARY OF STATE

STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

February 15, 2013

Mr. Ash Williams
Executive Director
State Board of Administration
1801 Hermitage Boulevard
Tallahassee, FL 32308

Dear Mr. Williams:

This letter is to inform you of the reappointment of Patsy Heffner as my designee to the State Board of Administration Participant Local Government Investment Advisory Council, effective immediately.

Her contact information is listed below.

Patsy Heffner
Osceola County Tax Collector
2501 E. Irla Bronson Hwy
Kissimmee, FL 34744
Telephone: (407) 742-4035
Cell: (407) 870-3069
Email: phef@osceola.org

Sincerely,

Pam Bondi
Attorney General

cc: Patsy Heffner
Governor Rick Scott
Chief Financial Officer Jeff Atwater

QUESTIONNAIRE FOR SENATE CONFIRMATION

13 MAR 20 PM 3:13

The information from this questionnaire will be used by the 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 blue or black ink.

DIVISION OF ELECTIONS
SECRETARY OF STATE

Date Completed

1. Name: Mrs. Heffner Patsy Thacker
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 2501 E. Irlo Bronson Hwy., Kissimmee, FL 34744
STREET OFFICE # CITY
P.O. Box: 422105, Kissimmee, FL 34742-2105 407-742-4035
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 1818 Admiral Court, Kissimmee, FL 34744 Osceola
STREET CITY COUNTY
407-847-5424
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business Residence Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>1818 Admiral Court, Kissimmee, FL</u>	<u>34744</u>	<u>5/1988</u>	<u>current</u>

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
<u>None</u>			

5. Date of Birth: 12/20/1945 Place of Birth: Abbeville, LA

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

Patricia Thacker - Maiden Name

Patricia T. Messer - First marriage.

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? 1946

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: Osceola B. Current Party Affiliation: Republican

12. Education

A. High School: Osceola High School Year Graduated: 1963

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
<u>Florida State University, Tallahassee, FL</u>	<u>1963-1964</u>	<u>none</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.) Yes No If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION

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
<u>Osceola County Tax Collector</u>	<u>Government Tax Collector</u>	<u>1999 to date</u>	
<u>P.O. Box 422105</u>			
<u>Kissimmee, FL 34742-2105</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:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
<u>Chief Deputy</u>	<u>Osceola County Clerk of Court</u>	<u>1997-1999</u>
<u>Tax Collector</u>	<u>Osceola County Tax Collector</u>	<u>1999-to date</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Background in legal and banking. Served the Florida Tax Collector Association as a Board member as well as Treasurer for 3 years. Served on the SBA Advisory Committee which was formed by the LGIP participants in November 2007, immediately after LGIP funds were frozen, representing the Florida Tax Collectors.

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:

Certified Florida Collector

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:

Member Florida Tax Collectors Association

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
<u>Osceola County Tax Collector</u>	<u>Appointed 1999</u>	<u>4 yrs.</u>	<u>State Officer</u>
	<u>Elected 2000, 2004, 2008</u>		

Judicial Qualification Commission 1996-1999 - (Unsure of exact appt. date) resigned 1999 due to Tax Collector appointment

Level of Government: - State

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Monthly

(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

To the best of my memory, I did not miss any meetings.

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:

<u>DATE</u>	<u>NATURE OF VIOLATION</u>	<u>DISPOSITION</u>

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:

<u>LICENSE/CERTIFICATE TITLE & NUMBER</u>	<u>ORIGINAL ISSUE DATE</u>	<u>ISSUING AUTHORITY</u>	<u>DISCIPLINARY ACTION/DATE</u>
Real Estate Salesman License	1992(?)	DPR	None

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:

<u>NAME OF BUSINESS</u>	<u>YOUR RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>

- 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>
<u>Iris Larson</u>	_____	_____	_____
<u>Ken van Assenderp</u>	_____	_____	_____
<u>Hon. Bob McKee</u>	_____	_____	_____

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 & TERM</u>	<u>DATE(S) OF MEMBERSHIP</u>
<u>Education Foundation Osceola County</u>	<u>2310 New Beginnings Rd., Kissimmee, FL</u>		<u>Bd. Member since early 1990</u>
<u>Florida Hospital</u>	<u>2400 Bedford Rd., Orlando, FL 32803</u>	<u>- Trustee -</u>	<u>1997 to date</u>
<u>Osceola Council On Aging</u>	<u>700 Generation Point, Kissimmee, FL 34744</u>	<u>Bd. Member</u>	<u>2006 to date</u>
<u>Fla. Tax Col. Assoc., P.O. Box 1833, Tallahassee, FL 32302</u>		<u>- Dir/Treas.</u>	<u>Member since 1999</u>

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

RECEIVED

13 MAR 20 PM 3:43

STATE OF FLORIDA
COUNTY OF OSCEOLA

DIVISION OF ELECTIONS
SECRETARY OF STATE

Before me, the undersigned Notary Public of Florida, personally appeared

Patsy Heffner

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.

Patsy Heffner

Signature of Applicant-Affiant

Sworn to and subscribed before me this 19 day of February, 2013.

Deborah Kay Kurnick

Signature of Notary Public-State of Florida

Deborah Kay Kurnick

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known OR Produced Identification

Type of Identification Produced _____



(seal)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1806

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Total Maximum Daily Loads

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino		ep SPB 7036 as introduced
2.	McKay	McVaney	GO	Favorable
3.				
4.				
5.				
6.				

I. Summary:

SB 1806 provides that the Department of Environmental Protection’s rules on total maximum daily load (TMDL) are exempt from the requirement of legislative ratification.

The bill substantially amends section 403.067(6)(c) of the Florida Statutes.

II. Present Situation:

Establishment of TMDLs in Florida

Under section 303 of the federal Clean Water Act (CWA), states are incentivized to adopt water quality standards (WQSs) for their navigable waters and must review and update those standards at least once every three years. These standards include:

- Designation of a waterbody’s beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.¹

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA), which codified the establishment of TMDLs for pollutants of waterbodies as required by the federal CWA.²

¹ 33 U.S.C. s. 1313(c)(2)(A); 40 C.F.R. ss. 131.6, 131.10-12.

² Section 403.067, F.S.

Each TMDL, which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by the waterbody while still meeting WQSs. Waterbodies that do not meet the established WQSs are deemed impaired and, pursuant to the CWA, the DEP establishes a TMDL for the waterbody or section of the waterbody that is impaired.³ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.⁴ Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas. If a state does not set TMDLs for impaired waterbodies, the EPA may revoke the delegation of authority permitted under the CWA and begin setting TMDLs within a state.

Restoration of impaired waterbodies can be expensive for both the public and private sectors, requiring infrastructure investments in wastewater and stormwater facilities, implementation of best management practices, acquisition of conservation lands, etc.

Legislative Ratification of Agency Rules

Pursuant to s. 120.541, F.S., any rule that meets any of three thresholds must be ratified by the Legislature. The three thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; and
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.⁵

TMDL rules will often meet or exceed one of the above thresholds, thus requiring ratification. If ratification is required, “the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.”⁶

According to the Department of Environmental Protection (DEP), one of the problems with ratifying TMDL rules is that if the notice deadline is missed, and TMDLs are developed throughout the year, then it can take up to a year for a rule to go into effect. This may result in significant delays in the process of restoring water quality.⁷

³ *Id.*

⁴ Chapter 62-302, F.A.C. (Surface Water Quality Standards). Nonpoint sources of pollution are essentially sources of pollution that are not point sources. Nonpoint sources of pollution can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

⁵ Section 120.541(2)(a)1.-3., F.S.

⁶ Section 120.541(3), F.S.

⁷ DEP, *Department of Environmental Protection Draft Bill Analysis* (Mar. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

III. Effect of Proposed Changes:

Section 1 amends s. 403.067, F.S., to exempt TMDLs and phased TMDLs from the legislative ratification requirements of s. 120.541(3), F.S.

Section 2 provides an effective date of July 1, 2013.

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:

Allowing the DEP to continue administering the TMDL program under the delegation of authority from the EPA might provide the private sector continuity and certainty in working within the existing DEP framework.

C. Government Sector Impact:

According to the DEP, the DEP will benefit from a modest reduction in staff time and costs associated with preparing and submitting TMDL rule packages to the Legislature for ratification.

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.

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

By the Committee on Environmental Preservation and Conservation

592-02849-13

20131806__

1 A bill to be entitled
 2 An act relating to total maximum daily loads; amending
 3 s. 403.067, F.S.; exempting total maximum daily load
 4 rules from legislative ratification; providing an
 5 effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Paragraph (c) of subsection (6) of section
 10 403.067, Florida Statutes, is amended to read:
 11 403.067 Establishment and implementation of total maximum
 12 daily loads.—
 13 (6) CALCULATION AND ALLOCATION.—
 14 (c) Adoption of rules. The total maximum daily load
 15 calculations and allocations established under this subsection
 16 for each water body or water body segment shall be adopted by
 17 rule by the secretary pursuant to ss. 120.536(1), 120.54, and
 18 403.805. Where additional data collection and analysis are
 19 needed to increase the scientific precision and accuracy of the
 20 total maximum daily load, the department is authorized to adopt
 21 phased total maximum daily loads that are subject to change as
 22 additional data becomes available. Where phased total maximum
 23 daily loads are proposed, the department shall, in the detailed
 24 statement of facts and circumstances justifying the rule,
 25 explain why the data are inadequate so as to justify a phased
 26 total maximum daily load. The rules adopted pursuant to this
 27 paragraph are ~~shall~~ not ~~be~~ subject to approval by the
 28 Environmental Regulation Commission and are not subject to the
 29 provisions of s. 120.541(3). As part of the rule development

Page 1 of 2

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

592-02849-13

20131806__

30 process, the department shall hold at least one public workshop
 31 in the vicinity of the water body or water body segment for
 32 which the total maximum daily load is being developed. Notice of
 33 the public workshop shall be published not less than 5 days nor
 34 more than 15 days before the public workshop in a newspaper of
 35 general circulation in the county or counties containing the
 36 water bodies or water body segments for which the total maximum
 37 daily load calculation and allocation are being developed.
 38 Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic TMDL's
Name Doug Mann
Job Title _____

Bill Number SB 1806
(if applicable)
Amendment Barcode _____
(if applicable)

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

Phone 222-7535
E-mail _____

Speaking: For Against Information

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic TMDL exemption
Name Kurt Spitzer
Job Title _____

Bill Number 1806
(if applicable)
Amendment Barcode _____
(if applicable)

Address _____
Street

City State Zip

Phone _____
E-mail _____

Speaking: For Against Information

Representing Florida Stormwater Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2013
Meeting Date

Topic TMDL exemption

Bill Number 1806
(if applicable)

Name Kate Kelly

Amendment Barcode _____
(if applicable)

Job Title LAD DEP

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

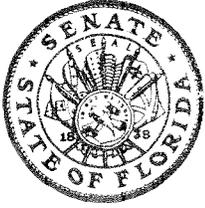
Representing DEP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

March 27, 2013

The Honorable Jeremy Ring
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request you place Senate Bill 1806, relating to Maximum Daily Loads, on your Government Oversight and Accountability Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: Joe McVaney, Staff Director

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

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- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 824

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Garcia

SUBJECT: Public Records/Forensic Behavioral Health Evaluation

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	Naf	McVaney	GO	Fav/CS
3.	_____	_____	RC	_____
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:

CS/SB 824 makes forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., confidential and exempt from public records disclosure requirements.

The bill provides a statement of public necessity for the exemption as required by the Florida Constitution.

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

This bill creates section 916.1065 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Forensic Mental Health¹³

Forensic Services

Chapter 916, F.S., addresses the treatment and adjudication of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or who are acquitted by reason of insanity.

Department of Children and Family Services

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF).

Section 916.12(3), F.S., authorizes the court to appoint experts to evaluate a criminal defendant's mental condition. In determining whether a defendant is competent to proceed, the examining expert must provide a report to the court regarding the defendant's capacity to appreciate the charges or allegations against him, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel, behave appropriately in court, and testify relevantly. A defendant must be evaluated by at least two experts prior to being involuntarily committed.¹⁴ A defendant charged with a felony who is found incompetent to proceed may be involuntarily committed if the court finds by clear and convincing evidence: (1) that the defendant is mentally ill; (2) all available, least restrictive alternatives are inadequate; and (3) there is a substantial probability that the mental illness will respond to treatment and that the defendant will be restored to competency.¹⁵

DCF provides mental health assessment, evaluation, and treatment of individuals who are committed following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.¹⁶

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) provides forensic services to defendants charged with a felony who have been found incompetent to proceed due to retardation or autism. Defendants with retardation or autism must be evaluated by at least one expert with expertise in evaluating persons with retardation or autism in order to evaluate the mental condition of the defendant.¹⁷ A defendant is considered incompetent to proceed if the expert finds that the defendant:

- Meets the definition of retardation or autism;

¹³ Much of the information included in this portion of the analysis is from the Interim Report by the Senate Committee on Children, Families, and Elder Affairs, *Forensic Hospital Diversion Pilot Program* (Oct. 2010). The report is available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-106cf.pdf> (last visited March 12, 2013).

¹⁴ s. 916.12(2), F.S.

¹⁵ s. 916.13(1), F.S. *See also*, s. 916.302, F.S.

¹⁶ *See* s. 916.107(1)(a), F.S.

¹⁷ s. 916.301, F.S.

- Does not have the sufficient present ability to consult with his or her attorney with a reasonable degree of rational understanding; and
- Has no rational and factual understanding of the proceedings.¹⁸

If the expert finds that the defendant is incompetent to proceed due to the defendant's retardation or autism, the expert must prepare a report for the court recommending training for the defendant in order to attain competency.¹⁹ Individuals charged with a felony and found incompetent to proceed due to retardation or autism are committed to APD for appropriate training.²⁰ In certain circumstances, the court may order the conditional release of a defendant found incompetent to proceed due to retardation or autism based on an approved plan for providing community-based training.²¹

Restoration of Competency

Competency restoration is designed to help defendants meaningfully participate in their own defense. If the court determines that the defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility.²² If the court finds that the defendant does not pose a risk to public safety, it may place the defendant on conditional release to receive competency restoration training in the community.²³

A defendant who is committed or placed on conditional release pursuant to ch. 916, F.S., is returned to court periodically for a review and report on his or her condition.²⁴ Generally, a review is conducted:

- No later than 6 months after the date of admission;
- At the end of any extended period of commitment;
- At any time upon the facility administrator's communication to the court that the defendant no longer meets commitment criteria; and
- Upon counsel's Motion for Review having been granted.

Once a defendant is determined to have regained his or her competence to proceed, the court is notified and a hearing is set for the judge to determine the defendant's competency.²⁵ If the court finds the defendant to be competent, the criminal proceeding resumes. If, however, the court finds the defendant incompetent to proceed, the defendant is returned to a forensic facility or community restoration on conditional release until competency is restored.²⁶

Confidentiality of Forensic Behavioral Health Evaluations

¹⁸ s. 916.3012, F.S.

¹⁹ s. 916.3012(4), F.S.

²⁰ s. 916.302, F.S.

²¹ s. 916.304, F.S.

²² s. 916.13, F.S.

²³ s. 916.17, F.S.

²⁴ ss. 916.13(2), 916.15(3) and 916.302(2)(a), F.S. See also s. 985.19(4)(e), (5) and (6), F.S., related to the court's jurisdiction and reporting requirements in juvenile cases.

²⁵ Rule 3.212, Fla.R.Crim.P.

²⁶ *Id.*

According to the Office of the State Courts Administrator, most forensic behavioral health evaluations filed with the court are neither confidential nor exempt under existing law or court rules.²⁷

A court may order records to be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for judicial records.²⁸

III. Effect of Proposed Changes:

The bill creates s. 916.1065, F.S., to make forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., confidential and exempt from public records disclosure requirements. The term “forensic behavioral health evaluation” is defined in the bill as meaning:

[A]ny record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.²⁹

The bill provides the following statement of public necessity for the exemptions as required by the Florida Constitution:

The Legislature finds that it is a public necessity that forensic behavioral health evaluations filed with the court pursuant to chapter 916, Florida Statutes, be confidential and exempt from disclosure under s. 24(a), Art. I of the State Constitution. The personal health of an individual and the treatment he or she receives is an intensely private matter. An individual’s forensic behavioral health evaluation should not be made public merely because it is filed with the court. Protecting forensic behavioral health evaluations is necessary to consistently protect the health care privacy rights of all persons. Making these evaluations confidential and exempt will protect information of a sensitive personal nature, the release of which would cause unwarranted damage to the reputation of an individual. Further, the knowledge that sensitive personal information is subject to disclosure could have a chilling effect on mental health experts who conduct the evaluations for use by the court. Therefore, making these evaluations confidential and exempt allows courts to effectively and efficiently make decisions relating to the competency of individuals who interact with the state courts system.

The bill specifies that the exemptions stand repealed October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect upon becoming a law.

²⁷ *Senate Bill 824 Judicial Impact Statement*, Office of the State Courts Administrator, March 15, 2013 (on file with the Senate Governmental Oversight and Accountability Committee).

²⁸ *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011).

²⁹ The types of records protected by the bill are already afforded confidentiality pursuant to s. 916.107(8), F.S., if they become part of a clinical record. In such cases, release of the records is governed by the provisions of that subsection.

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

Not applicable. This bill does not appear to affect county or municipal governments.

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

Article I, s. 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created public records exemption. Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

Public Necessity Statement

Article I, s. 24(c), of the Florida Constitution requires a public necessity statement for a newly created public records exemption. Because this bill creates new public records exemptions, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

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 Governmental Oversight and Accountability on April 9, 2013:

The CS:

- Removes references to s. 119.07(1), F.S., and to the Open Government Sunset Review Act, as judicial records are not subject to those provisions.
- Removes a reference to release of protected records that become part of a clinical record in certain circumstances, as that is already governed by current law.
- Clarifies the public necessity statement.

- B. **Amendments:**

None.

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



234164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 21 - 50
and insert:
court under this chapter is confidential and exempt from s.
24(a), Art. I of the State Constitution.

(2) As used in this section, the term "forensic behavioral
health evaluation" means any record, including supporting
documentation, derived from a competency, substance abuse,
psychosexual, psychological, psychiatric, psychosocial,
cognitive impairment, sanity, or other mental health evaluation
of an individual.



234164

13 Section 2. The Legislature finds that it is a public
14 necessity that forensic behavioral health evaluations filed with
15 the court pursuant to chapter 916, Florida Statutes, be
16 confidential and exempt from disclosure under s. 24(a), Art. I
17 of the State Constitution. The personal health of an individual
18 and the treatment he or she receives is an intensely private
19 matter. An individual's forensic behavioral health evaluation
20 should not be made public merely because it is filed with the
21 court. Protecting forensic behavioral health evaluations is
22 necessary to consistently protect the health care privacy rights
23 of all persons. Making these evaluations confidential and exempt
24 will protect information of a sensitive personal nature, the
25 release of which would cause unwarranted damage to the
26 reputation of an individual. Further, the knowledge that
27 sensitive personal information is subject to disclosure could
28 have a chilling effect on mental health experts who conduct the
29 evaluations for use by the court. Therefore, making these
30 evaluations confidential and exempt allows courts to effectively
31 and efficiently make decisions relating to the competency of
32 individuals who interact with the state courts system.

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete lines 7 - 10

37 and insert:

38 providing a

By Senator Garcia

38-00926-13

2013824__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 916.1065, F.S.; creating an exemption from public
 4 records requirements for a forensic behavioral health
 5 evaluation filed with a court; providing a definition
 6 for the term "forensic behavioral health evaluation";
 7 authorizing the release of such evaluations under
 8 certain circumstances; providing for future
 9 legislative review and repeal of the exemption under
 10 the Open Government Sunset Review Act; providing a
 11 statement of public necessity, applicability, and
 12 construction; providing an effective date.

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

15
 16 Section 1. Section 916.1065, Florida Statutes, is created
 17 to read:

18 916.1065 Confidentiality of forensic behavioral health
 19 evaluations:

20 (1) A forensic behavioral health evaluation filed with the
 21 court under this chapter is confidential and exempt from the
 22 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 23 Constitution.

24 (2) As used in this section, the term "forensic behavioral
 25 health evaluation" means any record, including supporting
 26 documentation, derived from a competency, substance abuse,
 27 psychosexual, psychological, psychiatric, psychosocial,
 28 cognitive impairment, sanity, or other mental health evaluation
 29 of an individual.

Page 1 of 2

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

38-00926-13

2013824__

30 (3) As provided by law, if the evaluation becomes part of a
 31 clinical record, the evaluation may be released as provided in
 32 s. 916.107(8).

33 (4) This section is subject to the Open Government Sunset
 34 Review Act in accordance with s. 119.15 and shall stand repealed
 35 on October 2, 2018, unless reviewed and saved from repeal
 36 through reenactment by the Legislature.

37 Section 2. The Legislature finds that it is a public
 38 necessity that forensic behavioral health evaluations filed with
 39 the court pursuant to chapter 916, Florida Statutes, be
 40 confidential and exempt from disclosure under public records
 41 requirements. The personal health of an individual and the
 42 treatment he or she receives is an intensely private matter. An
 43 individual's forensic behavioral health evaluation should not be
 44 made public merely because it is filed with the court.
 45 Protecting forensic behavioral health evaluations is necessary
 46 to consistently protect the health care privacy rights of all
 47 persons. This exemption applies during all judicial proceedings
 48 unless such records are released as provided by law. This
 49 exemption is limited and no broader than necessary to accomplish
 50 the stated purpose.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RENE GARCIA

38th District

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

April 9, 2013

The Honorable Jeremy Ring
Chair, Government Oversight & Accountability Committee
415 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear ChairmanRing:

Due to a scheduling conflict, I will not be able to present my bill *SB 824 Public Records/Forensic Behavioral Health Evaluation and SB 1014 Public Records/Participants in Treatment-Based Drug Court Programs*, at your committee meeting Monday afternoon. I ask that you allow a member of my staff *David Marin* to present the bill on my behalf. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38
RG:dm

CC: Joe McVaney, Staff Director

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/13

Meeting Date

Topic Public Records

Bill Number 824 (if applicable)

Name Robert Trammell

Amendment Barcode (if applicable)

Job Title Gen Counsel

Address PD Box 1799

Phone 850-510-2187

Street Tallahassee FL 32302

E-mail Robert Trammell45@gmail.com

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

Representing FL Public Defenders Assoc

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

WAIVE IN SUPPORT

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Public Records/Forensic

Bill Number SB 824 (if applicable)

Name Eric Maclure

Amendment Barcode (if applicable)

Job Title Intergov. Relations, State Courts Administrators

Address 500 South Duval St.

Phone 850-922-5692 Office

Street Tallahassee FL 32399

E-mail macluree@flcourts.org

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

Representing State Courts System

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

SENATOR RENE GARCIA

40th District

March 4, 2013

The Honorable Jeremy Ring
Chair, Governmental Oversight and Accountability Committee
405 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

This letter should serve as a request to have my bill **SB 824 Public Records/Forensic Behavioral Health Evaluation** heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38

RG:dm

CC: Joe McVaney, Staff Director

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1014

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: April 9, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Favorable
2.	Naf	McVaney	GO	Fav/CS
3.			RC	
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:

CS/SB 1014 creates a public records exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records, reports, and evaluations:

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

The bill provides that the exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill substantially amends section 397.334, Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Treatment-Based Drug Court Programs

Section 397.334, F.S., allows counties to fund a treatment-based drug court program (program) under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.¹³ Such programs may include pretrial intervention programs, treatment-based drug court programs, post-adjudicatory programs, and review of the status of compliance or noncompliance of sentenced offenders through a treatment based drug court program.¹⁴

Entry into a treatment-based drug court program must be voluntary, and written consent of the individual is necessary for a court to order him or her into a program.¹⁵ As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.¹⁶ Records of the screenings and evaluations may be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.

Confidentiality of Treatment-based Drug Court Program Records

There is no existing public records exemption for records relating to participation in a treatment-based drug court program. A court may order records to be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for judicial records.¹⁷

However, federal law restricts disclosure of information that:

- Would identify a person has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a treatment program; and
- Is drug abuse or alcohol abuse information obtained by a federally assisted drug abuse or alcohol abuse program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.¹⁸

An alcohol abuse or drug abuse program is considered to be federally assisted if it is:

- Conducted in whole or in part by any department or agency of the United States;

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 397.334(1), F.S.

¹⁴ Section 397.334(5), F.S.

¹⁵ Section 397.334(2), F.S.

¹⁶ Section 397.334(4), F.S.

¹⁷ *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011).

¹⁸ See 42 C.F.R. 2.

- Carried out under a license or other authorization granted by any department or agency of the United States;
- Supported by funds provided by any department or agency of the United States; or
- Assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.¹⁹

Federal law, therefore, may afford some level of protection to certain state court records relating to participation in treatment-based drug court program.

III. Effect of Proposed Changes:

The bill provides that information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records, reports, and evaluations is confidential and exempt from public records disclosure requirements:

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

The bill provides that the public records exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2018, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the Florida Constitution.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill creates a new public records exemption; therefore, a two-thirds vote is required.

¹⁹ *Id.*

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. This bill creates a new public records exemption; therefore, this bill includes a public necessity statement.

Single Subject Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill creates a public records exemption, it does not contain other substantive provisions.

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 Governmental Oversight and Accountability on April 9, 2013:

The CS:

- Restructures the public records exemption.
- Clarifies that the public records exemption applies to both participants in treatment-based drug court programs and persons considered for participation in such programs.
- Clarifies the public necessity statement.

B. Amendments:

None.

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



484586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) is added to section 397.334,
Florida Statutes, to read:

397.334 Treatment-based drug court programs.—

(10) (a) Information relating to a participant or a person
considered for participation in a treatment-based drug court
program which is contained in the following records, reports,
and evaluations is confidential and exempt from s. 119.07(1) and
s. 24(a), Art. I, of the State Constitution:



484586

13 1. Records relating to initial screenings for participation
14 in the program.

15 2. Records relating to substance abuse screenings.

16 3. Behavioral health evaluations.

17 4. Subsequent treatment status reports.

18 (b) This subsection is subject to the Open Government
19 Sunset Review Act in accordance with s. 119.15 and shall stand
20 repealed on October 2, 2018, unless reviewed and saved from
21 repeal through reenactment by the Legislature.

22 Section 2. The Legislature finds that it is a public
23 necessity that information relating to a participant or person
24 considered for participation in a treatment-based drug court
25 program under s. 397.334, Florida Statutes, which is contained
26 in certain records, reports, and evaluations, be made
27 confidential and exempt from s. 119.07(1), Florida Statutes, and
28 s. 24(a), Art. I of the State Constitution. Protecting
29 information contained in records relating to initial screenings
30 for participation in a treatment-based drug court program,
31 records relating to substance abuse screenings, behavioral
32 health evaluations, and subsequent treatment status reports is
33 necessary to protect the privacy rights of participants or
34 individuals considered for participation in treatment-based drug
35 court programs. Accordingly, the Legislature finds that the
36 chilling effect to an individual who is seeking treatment for
37 his or her substance abuse which would result from the release
38 of this information substantially outweighs any public benefit
39 derived from disclosure to the public. Making this information
40 confidential and exempt will protect information that is of a
41 sensitive, personal nature; thus, the release of this



484586

42 information would cause unwarranted damage to the reputation of
43 an individual. Furthermore, making this information confidential
44 and exempt will encourage individuals to participate in drug
45 court programs, and thereby promote the effective and efficient
46 administration of treatment-based drug court programs.

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

48

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

50 And the title is amended as follows:

51 Delete everything before the enacting clause
52 and insert:

53 A bill to be entitled
54 An act relating to public records; amending s.
55 397.334, F.S.; exempting from public records
56 requirements information from the initial screenings
57 for participation in a treatment-based drug court
58 program, substance abuse screenings, behavioral health
59 evaluations, and subsequent treatment status reports
60 regarding a participant or a person considered for
61 participation in a treatment-based drug court program;
62 providing for future repeal and legislative review of
63 the exemption under the Open Government Sunset Review
64 Act; providing a statement of public necessity;
65 providing an effective date.

By Senator Garcia

38-00927-13

20131014__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 397.334, F.S.; exempting from public records
 4 requirements the initial screenings for a treatment-
 5 based drug court program, substance abuse screenings,
 6 behavioral health evaluations, and subsequent
 7 treatment status reports regarding a participant in a
 8 treatment-based drug court program; providing for
 9 future repeal and legislative review of the exemption
 10 under the Open Government Sunset Review Act; providing
 11 a statement of public necessity; providing an
 12 effective date.

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

15
 16 Section 1. Subsection (10) is added to section 397.334,
 17 Florida Statutes, to read:

18 397.334 Treatment-based drug court programs.—

19 (10) Initial screenings for participation in a treatment-
 20 based drug court program, substance abuse screenings, behavioral
 21 health evaluations, and subsequent treatment status reports
 22 relating to a participant in a treatment-based drug court
 23 program under this section are confidential and exempt from s.
 24 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 25 subsection is subject to the Open Government Sunset Review Act
 26 in accordance with s. 119.15 and shall stand repealed on October
 27 2, 2018, unless reviewed and saved from repeal through
 28 reenactment by the Legislature.

29 Section 2. The Legislature finds that it is a public

Page 1 of 2

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

38-00927-13

20131014__

30 necessity that initial screenings for participation in a
 31 treatment-based drug court program, substance abuse screenings,
 32 behavioral health evaluations, and subsequent treatment status
 33 reports relating to a participant in a treatment-based drug
 34 court program under s. 397.334, Florida Statutes, be made exempt
 35 from public records requirements. This exemption is necessary to
 36 protect the privacy rights of participants in treatment-based
 37 drug court programs. These records are federally recognized as
 38 confidential in 42 C.F.R. 2, regarding the confidentiality of
 39 records of patients who suffer from alcohol or drug abuse.
 40 Accordingly, the Legislature finds that the chilling effect to a
 41 participant who is seeking treatment for his or her substance
 42 abuse which would result from the release of his or her
 43 evaluations, screenings, and reports substantially outweighs any
 44 public benefit derived from disclosure to the public.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RENE GARCIA

38th District

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

April 9, 2013

The Honorable Jeremy Ring
Chair, Government Oversight & Accountability Committee
415 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear ChairmanRing:

Due to a scheduling conflict, I will not be able to present my bill *SB 824 Public Records/Forensic Behavioral Health Evaluation and SB 1014 Public Records/Participants in Treatment-Based Drug Court Programs*, at your committee meeting Monday afternoon. I ask that you allow a member of my staff *David Marin* to present the bill on my behalf. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38
RG:dm

CC: Joe McVaney, Staff Director

REPLY TO:

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Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/13

Meeting Date

Topic Public Records

Bill Number 1014 (if applicable)

Name Robert Trammell

Amendment Barcode (if applicable)

Job Title Gen Counsel

Address PO Box 1799

Phone 850 510-2187

Street Tallahassee FL 32302

E-mail ROBERT Trammell

City Tallahassee FL 32302

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

45 @ GMAIL . com

Representing FL Public Defenders

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

WAIVE IN SUPPORT

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Public Records/ Drug Court

Bill Number SB 1014 (if applicable)

Name Eric Maclure

Amendment Barcode (if applicable)

Job Title Intergov. Relations, State Courts Administrators

office

Address 500 South Duval St

Phone 850-922-5692

Street Tallahassee FL 32399

E-mail macluree@flcourts.org

City Tallahassee FL 32399

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

Representing State Courts System

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [] Yes [] No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

SENATOR RENE GARCIA

40th District

March 13, 2013

The Honorable Jeremy Ring
Chair, Governmental Oversight and Accountability Committee
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

This letter should serve as a request to have my bill *SB 1014 Public Records/
Participants in Treatment-based Drug Court Programs* heard at the next possible
committee meeting. If there is any other information needed please do not hesitate to
contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38

RG:dm

CC: Joe McVaney, Staff Director

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

March 13, 2013
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1734

INTRODUCER: Governmental Oversight and Accountability Committee, Criminal Justice Committee and Senator Flores

SUBJECT: Public Records Exemption/Expunged Criminal History Records of Human Trafficking Victims

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Naf	McVaney	GO	Fav/CS
3.			RC	
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:

CS/CS/SB 1734, which is linked to the passage of SB 1644, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by the Florida Department of Law Enforcement (FDLE) is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction.

The bill provides for repeal of the exemption on October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill creates a new public record exemption; therefore, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill substantially amends a currently nonexistent section of the Florida Statutes that is created by the linked bill, SB 1644.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

Public Record Exemption for Expunged Criminal History Records

A criminal history record of a minor or an adult that is ordered expunged must be physically destroyed by any criminal justice agency having custody of such record, except that the FDLE must retain criminal history records in all cases.¹³ Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt from public records requirements, and is not available to any person or entity except upon order of the court with jurisdiction.¹⁴

In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to specified entities for their respective licensing, access authorization, and employment purposes as well as to criminal justice agencies for their respective criminal justice purposes.¹⁵ Disclosure of the existence of such record to unauthorized persons is a first degree misdemeanor.¹⁶

SB 1644 (linked to this bill)

SB 1644 creates s. 943.0583, F.S., entitled “human trafficking victim expunction.” The bill authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S.,¹⁷ committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme. The bill defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

III. Effect of Proposed Changes:

The bill, which is linked to the passage of SB 1644, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction.

¹² Section 119.15(5)(b), F.S.

¹³ Section 943.0585(4), F.S.

¹⁴ *Id.*

¹⁵ Section 943.0585(4)(c), F.S.

¹⁶ *Id.* A first degree misdemeanor is punishable by serving up to one year in county jail and/or paying a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

¹⁷ The offenses listed in s. 775.084(1)(b)1., F.S, are arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter or an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

A criminal justice agency may retain a notation indicating compliance with an order to expunge.

The bill also provides the following statement of public necessity as required by the Florida Constitution:¹⁸

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

Finally, the bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill will take effect on the same date that SB 1644 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

¹⁸ FLA. CONST., art. I, s. 24(c).

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to expunged criminal records of victims of human trafficking.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE, there is no fiscal impact as a result of this bill.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

It appears that a notation the bill authorizes a criminal justice agency to retain indicating compliance with an order to expunge may be confidential and exempt from public records requirements in accordance with s. 984.0585(4)(c), F.S. Because this bill does not republish the existing public records exemption along with the exemption created by the bill, however, it is unclear whether the current public records exemption would apply to such a notation. If not, the next annual adoption and reenactment of the Florida Statutes would provide sufficient legislative intent for s. 984.0585(4)(c), F.S., to apply to a notation retained by a criminal justice agency that indicates compliance with an order to expunge a human trafficking victim's criminal history.

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

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

CS/CS by Governmental Oversight and Accountability on April 9, 2013:

The CS/CS clarifies the public necessity statement.

¹⁹ FDLE Legislative Analysis for SB 1734, dated March 14, 2013, on file with the Senate Criminal Justice Committee.

CS by Criminal Justice on April 1, 2013:

Deletes the provision making information related to the existence of an expunged criminal history record that is provided under paragraph (8) (b) confidential and exempt.

B. Amendments:

None.

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



266688

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 28 - 29
and insert:

Section 2. The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and

By the Committee on Criminal Justice; and Senator Flores

591-03357-13

20131734c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 943.0583, F.S.; providing an exemption from public
 4 records requirements for criminal history records of
 5 victims of human trafficking expunged under s.
 6 943.0583, F.S.; providing for future legislative
 7 review and repeal of the exemption under the Open
 8 Government Sunset Review Act; providing a statement of
 9 public necessity; providing a contingent effective
 10 date.

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

13
 14 Section 1. Subsection (9) of section 943.0583, Florida
 15 Statutes, is created to read:

16 943.0583 Human trafficking victim expunction.—

17 (9) (a) A criminal history record ordered expunged under
 18 this section that is retained by the department is confidential
 19 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 20 Constitution and shall not be disclosed to any person or entity
 21 except upon order of a court of competent jurisdiction. A
 22 criminal justice agency may retain a notation indicating
 23 compliance with an order to expunge.

24 (b) This subsection is subject to the Open Government
 25 Sunset Review Act in accordance with s. 119.15 and shall stand
 26 repealed on October 2, 2018, unless reviewed and saved from
 27 repeal through reenactment by the Legislature.

28 Section 2. The Legislature finds that it is a public
 29 necessity that persons who are victims of human trafficking and

Page 1 of 2

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

591-03357-13

20131734c1

30 who have been convicted of crimes committed at the behest of
 31 their traffickers are themselves victims of crimes. Such victims
 32 face barriers to employment and other life opportunities as long
 33 as these criminal convictions remain on record and accessible to
 34 potential employers and others. It is necessary that these
 35 records be made confidential in order for human trafficking
 36 victims to have the chance to rebuild their lives and reenter
 37 society.

38 Section 3. This act shall take effect on the same date that
 39 SB 1644 or similar legislation takes effect, if such legislation
 40 is adopted in the same legislative session or an extension
 41 thereof and becomes law.

42 Section 4. This act shall take effect July 1, 2013.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: April 2, 2013

I respectfully request that **Senate Bill #1734**, relating to Public Records Exemption/Victims of Human Trafficking, be placed on the:

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

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 606

INTRODUCER: Transportation Committee and Senator Gibson and others

SUBJECT: Northeast Florida Regional Transportation Commission

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Anderson	Yeatman	CA	Favorable
3.	McKay	McVaney	GO	Favorable
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:

CS/SB 606 creates the Northeast Florida Regional Transportation Commission (commission) for the purposes of improving mobility and expanding multimodal transportation options for persons and freight throughout Baker, Clay, Duval, Nassau, Putnam, and St. Johns Counties. The primary provisions of the bill:

- create the Northeast Florida Regional Transportation Commission;
- provide for commission membership, powers and duties, and funding;
- provide criteria for transportation projects of regional significance;
- authorize the acquisition of lands and property but do not authorize the use of condemnation or eminent domain;
- exempt the commission from taxation;
- provide for repeal of the commission unless certain conditions are met; and
- provide that the commission is exempt from the Administrative Procedures Act.

This bill creates the following sections of the Florida Statutes: 343.1001, 343.1002, 343.1003, 343.1004, 343.1005, 343.1006, 343.1008, 343.1009, 343.1010, 343.1011, 343.1012, and 343.1013, constituting part V of chapter 343; and amends section 120.52 of the Florida Statutes.

II. Present Situation:

Background

In 2009, the Legislature enacted HB 1213,¹ requiring the Jacksonville Transportation Authority (JTA), at the direction of the Florida Department of Transportation (FDOT), to perform a Regional Transportation Authority study. That study affirmed the need for a regional approach to transportation in Northeast Florida but also recommended further study. Additionally, the 2009 Regional Transportation Authority Study Final Report found that the development of a regional transportation elements plan is needed as the basis for further action on any regional transportation initiative.²

In 2010, the Legislature enacted SB 2470,³ creating the Northeast Florida Regional Transportation Study Commission, consisting of representatives from Baker, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns counties and the JTA.⁴ The bill required the study commission to prepare a report detailing its findings and making recommendations regarding regional transportation. The report was required to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012. The report was required to include a regional transportation elements plan, the defining characteristics of transportation elements of regional significance, and an implementation plan for undertaking a regional transportation element plan. The report was allowed to include recommendations for the establishment of a regional transportation authority, draft legislation, and any other legislation the study commission deemed appropriate.

Recommendations from the Study

In December 2012, the Northeast Florida Regional Transportation Study Commission issued its final report.⁵ The report recommended a two-phased approach to regional transportation governance. Phase I would be a regional transportation commission, and Phase II would be the establishment of a regional transportation entity and proposed funding to implement the multimodal regional transportation commission's regional transportation plan.

In Phase I, the commission will:

- develop a multimodal regional transportation plan;
- identify and secure dedicated funding to implement the plan;
- advance strategic projects and services with an initial focus on coordinating regional transit; and
- propose an organizational framework for implementing the regional transportation plan.

¹ Ch. 2009-111, L.O.F.

² A copy of the 2009 Regional Transportation Study Final Report is available at <http://www.northfloridartsc.com/Pages/LegislationReports.aspx> (last visited March 20, 2013).

³ Ch. 2010-202, L.O.F.

⁴ The Department of Transportation's District 2 Secretary, the chair of the Northeast Florida Regional Council, and the North Florida Transportation Planning Organization served as nonvoting members of the Northeast Florida Regional Transportation Study Commission.

⁵ A copy of the Northeast Florida Regional Transportation Study Commission's final report is available at <http://www.northfloridartsc.com/Pages/default.aspx> (last visited March 20, 2013).

In Phase II, the multimodal regional transportation plan would be implemented with dedicated funding as authorized by future legislation.

The bill implements the recommended first Phase, creating the Northeast Florida Regional Transportation Commission.

III. Effect of Proposed Changes:

Chapter 343, F.S. (Section 1)

The bill creates a new part V of ch. 343, F.S., consisting of ss. 343.1001 through 343.1013, F.S.

Short Title (Section 2)

The bill creates s. 343.0001, F.S., creating the Northeast Florida Regional Transportation Commission Act as part I of ch. 343, F.S.

Definitions: (Section 3)

The bill creates s. 343.1002, F.S., defining various terms. Notably the bill contains very broad definitions of the following terms:

Transportation facilities means all mobile and fixed assets, including real or personal property or rights therein, used in the transportation of persons or property by any means of conveyance, and all related appurtenances. This includes:

- highways; bridges; limited or controlled access roadways, lanes and related facilities;
- docks, wharves, vessels, jetties, piers, and marine terminals;
- vehicles, fixed guideway facilities, including freight rail, intermodal facilities, and any means of conveyance of persons or property of all types;
- passenger and other terminals;
- park and ride facilities;
- bicycle ways and related facilities;
- pedestrian ways and pedestrian-related facilities appurtenant to other transportation facilities;
- transit-related improvements or developments adjacent to transit facilities or stations; and
- bus, train, vessel, or other vehicle storage, cleaning, fueling, control, and maintenance facilities.

Unlike other statutory entities with transportation-related functions, this definition also includes administrative or other office space for the commission.

Transportation Services means the conveyance of persons or property including mass transit services such as fixed-route bus, fixed-guideway vehicle service, paratransit service, flex route or demand responsive service; and the planning and funding of transportation facilities.

Northeast Florida Regional Transportation Commission (Section 4)

The bill creates s. 343.1003, F.S., establishing the Northeast Florida Regional Transportation Commission. The commission covers a six-county area comprised of Baker, Clay, Duval, Nassau, Putnam, and St. Johns Counties.⁶ The commission's governing board consists of nine members who are selected as follows:

- The county commissions of Baker, Clay, Nassau, Putnam, and St. Johns Counties each appoint one person, who may be an elected official of the county.
- The City of Jacksonville will be represented by four members, who may be elected officials of the city. Of the four members the Mayor of the City of Jacksonville appoints two members, and the Jacksonville City Council appoints two members.

To ensure continuity on the initial governing board, the initial appointees will draw lots at the governing board's first meeting to provide for two-, three- and four-year terms. An appointed member may not select or have a designee selected to serve in the absence of the member, whether the member is an elected official or otherwise. However, if an appointed member is designated by the appointing entity by title, such as a chair of a county commission or a chair of a transportation planning agency, the successor or vice-chair of the position may serve for the appointee in his or her absence. After the initial board's terms, members will be appointed for four-year terms. A member may not serve more than two consecutive terms.

The DOT secretary appoints a nonvoting advisor to the board. In addition, the board may create an advisory panel, whose membership will be determined by the board, and may establish committees by direction of the chair or upon vote of the board.

Members of the board and persons appointed to a committee or advisory panel serve without compensation, but are entitled to receive reimbursement for travel expenses and per diem actually incurred in connection with commission business.⁷ Members of the board are required to file with the Commission on Ethics as their mandatory financial disclosure the Form 1 statement of financial interest.⁸

At its inaugural meeting, and annually thereafter, the board is required to elect a chair, vice chair, secretary, and treasurer from among its members, to serve a one-year term. No person may hold the office of chair for more than two consecutive terms. The commission's first meeting must be held no later than 60 days after its creation.

The commission may employ an executive director and an administrative assistant to the board and executive director. The commission may employ permanent or temporary staff, including consultants, as it determines necessary or convenient. Alternatively, with the approval of their respective boards or administrative chiefs, the commission may use the staff of the:

⁶ Flagler County declined to join the commission.

⁷ The provisions for per diem and travel expenses are in s. 112.061, F.S.

⁸ The Form 1 statement of financial interest is provided for in s. 112.3145, F.S. Section 348.0003(4)(c), F.S., requires members of transportation authorities created pursuant to ch. 343, F.S., to file Form 6 with the Commission on Ethics, which is a more detailed financial disclosure.

- JTA, its legal counsel, technical experts, engineers, and other administrative employees;
- North Florida Transportation Planning Organization, for planning matters;
- Northeast Florida Regional Council, for planning and coordination matters;
- FDOT;
- Jacksonville Port Authority; and
- the counties represented on the commission board, on an as-needed basis.

Members of the board may be removed by their appointing entity for cause, including, but not limited to, failure to attend two or more commission meetings in a 9-month period.

No liability exists on the part of, and no cause of action of any nature shall arise against, any commission member for any action taken in the performance of their duties.

Commission Powers and Duties (Section 5)

The bill creates s. 343.1004, F.S., providing the commission's powers and duties. The commission's express purposes are to improve mobility and expand multimodal transportation options for passengers and freight throughout the six-county Northeast Florida region. The commission shall, at a minimum:

- develop a multimodal, prioritized plan for transportation projects of regional significance; and
- research and develop an implementation plan that identifies available but not yet imposed, and potentially developable, sources of funding to execute the regional transportation plan.

In developing the regional transportation plan, the commission is to review and coordinate with the future land use, capital improvements, and traffic circulation elements of the constituent counties' local governments' comprehensive plans, the Northeast Florida Regional Council's Strategic Regional Policy Plan,⁹ and the schedules of other units of government having transit or transportation authority within whose jurisdiction the projects or improvements will be located. This process is intended to define and resolve potential inconsistencies between these plans and the commission's regional transportation plan.

The commission is to present the regional transportation plan and updates to the governing bodies of the constituent counties within 90 days after adoption. The commission is to update the regional transportation plan and the implementation plan not less frequently than every other year. The commission may plan, develop, construct, coordinate, and promote transportation projects of regional significance that are identified in the commission's regional transportation plan.

Subject to available funding and with the approval of the affected counties and transportation authorities, the commission may provide transportation services of regional significance identified in the regional transportation plan.

⁹ A copy of the Northeast Florida Regional Council's Strategic Regional Policy Plan is available at <http://www.nefrc.org/SRPP.htm> (last visited February 11, 2013).

The commission may facilitate efforts to secure funding commitments from federal and state sources, or from the applicable counties, for the planning, development, construction, purchase, operation and maintenance of transportation projects of regional significance or that support intercounty mobility for persons or freight.

The commission may request funding and technical assistance from DOT and from federal and local agencies. In order to operate for its first five years, the commission is also to request annual funding from each constituent county of up to 30 cents per capita per year based on the latest census. However, the contribution of Duval County may not exceed 45 percent of the commission's budget for any fiscal year.

The commission may exercise all powers necessary, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers to:

- Sue and be sued in all courts.
- Apply for and to accept grants from federal, state, local, or private sources.
- Partner with private sector business community entities and engage the public in support of regional multimodal transportation improvements.
- Adopt rules for the regulation of the affairs and the conducting of business, including termination of membership in the commission for the nonpayment of county contributions.
- Advertise, market, and promote regional transit services and facilities, freight mobility plans and projects, and the activities of the commission.
- Cooperate with other governmental entities and contract with other governmental agencies.
- Purchase directly from local, national, or international insurance companies liability insurance that the commission is contractually and legally obligated to provide, notwithstanding the requirements of s. 287.022(1), F.S.¹⁰
- Make contracts and execute necessary instruments.
- Form public benefit corporations with other agencies of the state or local governments.
- Do all acts and things necessary or convenient for the conduct of its business and the general welfare of the commission in order to carry out its powers.

The commission does not have the power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency of the state. The commission's obligations may not be deemed to be obligations of the state or of any political subdivision.

Transportation Projects of Regional Significance (Section 6)

The bill creates s. 343.1005, F.S., providing that transportation projects of regional significance are those transportation facilities and transportation services within a regional transportation corridor identified in the Northeast Florida Regional Transportation Study Commission's December 2012 report, or subsequently identified by the commission, which:

- exhibit a significant level of travel between counties or regions;
- provide a primary connection between activity centers or municipalities;

¹⁰ Section 287.022(1), F.S., pertains to the purchase of insurance for all agencies by the Department of Management Services.

- exhibit a significant percentage of freight conveyance;
- provide a primary connection to marine, aviation or intermodal facilities;
- provide a regional emergency evacuation route;
- support or enhance the functionality of another identified transportation project of regional significance in the corridor by providing for regional movement or removing non-regional trips from some other transportation project of regional significance; or
- have such other characteristics as the commission determines to be of regional significance.

Coordination with Other Agencies (Section 7)

The bill creates s. 343.1006, F.S., requiring the regional transportation plan and implementation plan to be forwarded to the North Florida Transportation Planning Organization for inclusion in its long-range transportation plans and other planning documents. To the extent feasible, the commission's planning activities, including the development and adoption of the regional transportation plan and the implementation plan, shall be coordinated with the work of the North Florida Transportation Planning Organization, the Northeast Florida Regional Council, and DOT.

Authority to Contract (Section 8)

The bill creates s. 343.1008, F.S., authorizing any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual to contract with the commission. The commission may make and enter into contracts, leases, conveyances, partnerships, interlocal and other agreements with any political subdivision, agency, or instrumentality of the state and any federal agencies, corporations, and individuals for the purpose of carrying out its statutory authority and serving the purposes of the commission.

Exemption from taxation and assessment (Section 9)

The bill creates s. 343.1009, F.S., providing that effectuation of the commission's authorized purposes is for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and because the commission performs essential governmental functions, the commission is not required to pay taxes or assessments of any kind upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it.

Powers of Commission are Supplemental (Section 10)

The bill creates s. 343.1010, F.S., providing that the powers conferred by this part are supplemental to the existing authority of the North Florida Transportation Planning Organization, the JTA, the Northeast Florida Regional Council, the counties and the municipalities located therein, and the DOT. This does not repeal any other law, general, special, or local, but supplements other laws in the exercise of the powers provided and provides a complete method for the exercise of powers granted to the commission. The projects of the commission must comply with all applicable federal, state, and local laws and may be accomplished in compliance with the provisions of the bill without regard to or necessity for compliance with the provisions, limitation, or restrictions contained in any other general, special,

or local law except as specifically set forth in the bill. The bill does not repeal, rescind, or modify any other law relating to the North Florida Transportation Planning Organization, the JTA, or DOT.

Public Meetings and Hearings (Section 11)

The bill creates s. 343.1011, F.S., requiring the commission to meet at the times and locations as the chair determines, provided that to the extent feasible there be regular quarterly meetings.

The bill also provides that before the adoption of the regional transportation plan or the implementation plan, the commission must conduct a properly noticed public hearing in each of the affected counties, at least one of which must be before the commission's board. At the hearings, any interested party has the opportunity to be heard and to introduce testimony. Additionally, the commission shall comply with all applicable federal and state requirements related to new or altered transportation facilities or services.

Discretionary Sales Surtax (Section 12)

The bill creates s. 343.1012, F.S., providing that the commission is not an "authority" for the purposes of the Charter County and Regional Transportation System Surtax.¹¹

Repeal (Section 13)

The bill creates s. 343.1013, F.S., repealing this act on November 30, 2018, unless:

- the commission has adopted a regional transportation plan and the implementation plan, and at least Clay, Duval, Nassau, and St. Johns counties have adopted resolutions endorsing the plans; and
- adequate funding sources to carry out the initial phases of such plans have been secured.

Florida Administrative Code (Section 14)

Currently, s. 120.52(1), F.S., defines "agency" for the purpose of the Administrative Procedures Act (APA).¹² The statute excludes expressway authorities created pursuant to ch. 348, F.S., and transportation authorities created pursuant to ch. 343 or 349, F.S., from the definition of "agency" for the purposes of the APA. The bill amends the definition of "agency" contained in s. 120.52(1), F.S., to exclude a "commission" created pursuant under ch. 343 or 349, F.S.; thus, the Northeast Florida Regional Transportation Commission will not be subject to the APA.

Effective Date (Section 15)

The bill has an effective date of July 1, 2013.

¹¹ S. 212.055(1), F.S.

¹² Ch. 120, F.S.

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

Section 18(a) of Article VII of the State Constitution provides that unless certain requirements are met, neither counties nor municipalities are bound by a state law that requires the county or municipality to spend money or to take action that requires the expenditure of money. However, pursuant to Section 18(d), laws having an insignificant fiscal impact, which has been established by the Legislature as \$1.9 million, are exempt from the mandate requirements.

The bill requires the commission to request that each constituent county contribute cash for the operation of the commission. Nothing in the bill imposes a duty on the counties to fund the commission, but even if there were such a duty, the amount of money to be contributed by the counties, in total, is roughly \$215,000, which is a small enough amount to be deemed an insignificant fiscal impact. Therefore, the constitutional requirements relating to local government mandates do not appear to apply to this bill.

B. Public Records/Open Meetings Issues:

Section 11 of the bill provides for regular public meetings of the Board, which is the governing body of the commission. Since the bill is silent as to whether the provisions of section 11 are intended to supplement or supplant the public meeting requirements of s. 286.011, F.S., which apply to any “agency,” and the bill declares the commission to be an agency of the state, the provisions in section 11 of the bill appear to be supplemental to the requirements contained in s. 286.011, F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, Section 5 of the Constitution of the State of Florida provides that “[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that...any officer may be a member of a ...statutory body having only advisory powers.” The constitutional dual office-holding prohibition does not apply to the bill as written, since it permits, but does not require, the member counties and the City of Jacksonville to appoint its elected officials to the nine-member governing board of the commission. If elected officials are in fact appointed to the governing board, they may wish to seek appropriate legal counsel as to whether the dual office holding prohibition would apply.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

For the first five years, the commission is expected to be funded from monies appropriated from each of the constituent counties up to 30 cents per capita per year. However, Duval County’s contribution cannot exceed 45 percent of the commission’s budget. The Northeast Florida Regional Transportation Study Commission estimated that the Northeast Florida Regional Transportation Commission’s annual budget will be roughly \$215,000. This results in an estimated cost of 21.1 cents per capita. The estimated county contributions are as follows:

County	Estimated Contribution
Baker	\$5,682
Clay	\$40,331
Duval	\$96,445 ¹³
Nassau	\$15,547
Putnam	\$15,625
St. Johns	\$40,692
Total	\$214,322

VI. Technical Deficiencies:

None.

VII. Related Issues:

Requirements for Agencies

Line 85 of the bill declares the commission to be an “agency of the state.”

Section 14 of the bill excludes transportation commissions created in ch. 343, F.S., from the definition of “agency” for purposes of the APA (effectively exempting the commission from rulemaking). Line 247 of the bill permits the commission to “adopt rules.” The bill thus creates a general provision that the commission is a state agency, and a specific provision exempting the commission from the requirements of the APA which would otherwise apply to an agency. Where general and specific statutes conflict, courts will recognize the specific statute, unless it can be demonstrated that the Legislature clearly intended the contrary.¹⁴ Therefore, in order to avoid the conflict the bill creates as to whether the commission is an agency, as applied to rulemaking, the specific exclusion created by section 14 of the bill would probably apply.

Other requirements that apply to agencies of the executive branch probably do not apply to the commission, such as chapters 110, 216, and 287, F.S., since the commission is not created as an

¹³ Duval County’s contribution is based on a maximum of 45 percent of the costs.

¹⁴ *Palm Beach Cnty. Canvassing Bd. v. Harris*, 772 So.2d 1273 (Fla. 2000).

adjunct to the executive branch. However, the executive director, administrative assistant, and other permanent employees that the commission may employ are probably compulsory participants in the Florida Retirement System, which is compulsory for all employees employed by an “employer,” (defined in s. 121.021, F.S., as “any agency...of the state”).

Contracting

In section 8, the bill gives authority to the commission to contract with corporations and individuals but does not provide competitive solicitation requirements for those contracting activities. The commission does not appear to be an agency of the executive branch for which the competitive solicitation requirements of ch. 287, F.S., would apply. If the Legislature wishes to require the commission to adhere to competitive solicitation requirements, it should state those requirements in the bill.

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 Transportation on March 21, 2013:

The committee substitute incorporates five amendments which, collectively, removed provisions which would have granted the commission the authority to acquire, own, operate, maintain, or manage transportation facilities. Rather, the commission is limited to essentially providing transit services of regional significance.

- B. **Amendments:**

None.

By the Committee on Transportation; and Senators Gibson,
Thrasher, Bradley, and Bean

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1 A bill to be entitled
2 An act relating to the Northeast Florida Regional
3 Transportation Commission; providing a directive to
4 the Division of Law Revision and Information; creating
5 s. 343.1001, F.S.; providing a short title; creating
6 s. 343.1002, F.S.; providing definitions; creating s.
7 343.1003, F.S.; creating the Northeast Florida
8 Regional Transportation Commission; providing for a
9 nine-member commission board; providing for board
10 appointment; providing for staffing; providing for
11 member removal; providing liability protection for
12 members; creating s. 343.1004, F.S.; providing
13 commission powers and duties; prohibiting the
14 commission from pledging the state's credit; creating
15 s. 343.1005, F.S.; providing for transportation
16 projects of regional significance; specifying the
17 characteristics for such projects; creating s.
18 343.1006, F.S.; requiring commission plans and
19 planning activity to be coordinated with other
20 specified entities; creating s. 343.1008, F.S.;
21 authorizing other governmental units and the
22 commission to contract with each other; creating s.
23 343.1009, F.S.; exempting the commission from taxes or
24 assessments; creating s. 343.1010, F.S.; specifying
25 that the powers of the commission are supplemental to
26 other laws; creating s. 343.1011, F.S.; providing for
27 public meetings and hearings; creating s. 343.1012,
28 F.S.; specifying that the commission is not an
29 authority for purposes of specified provisions

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30 relating to a discretionary tax; creating s. 343.1013,
31 F.S.; providing for repeal; amending s. 120.52, F.S.;
32 conforming provisions; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. The Division of Law Revision and Information is
37 requested to create part V of chapter 343, Florida Statutes,
38 consisting of ss. 343.1001-343.1013, Florida Statutes.

39 Section 2. Section 343.1001, Florida Statutes, is created
40 to read:

41 343.1001 Short title.—This part may be cited as the
42 “Northeast Florida Regional Transportation Commission Act.”

43 Section 3. Section 343.1002, Florida Statutes, is created
44 to read:

45 343.1002 Definitions.—As used in this part, the term:

46 (1) “Agency of the state” means the state and any
47 department of the state, the commission, or any corporation,
48 agency, or instrumentality created, designated, or established
49 by the state.

50 (2) “Board” means the governing body of the commission.

51 (3) “Commission” means the Northeast Florida Regional
52 Transportation Commission.

53 (4) “Department” means the Department of Transportation.

54 (5) “Transportation authorities” means the department and
55 any entity created under this chapter, chapter 348, or chapter
56 349.

57 (6) “Transportation facilities” means all mobile and fixed
58 assets, including real or personal property or rights therein,

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59 used in the transportation of persons or property by any means
 60 of conveyance, and all appurtenances thereto, such as, but not
 61 limited to: highways; bridges; limited or controlled access
 62 roadways, lanes, and related facilities; docks, wharves,
 63 vessels, jetties, piers, and marine terminals; vehicles, fixed
 64 guideway facilities, including freight rail, intermodal
 65 facilities, and any means of conveyance of persons or property
 66 of all types; passenger and other terminals; park-and-ride
 67 facilities; bicycle ways and related facilities; pedestrian ways
 68 and pedestrian-related facilities appurtenant to other
 69 transportation facilities; transit-related improvements or
 70 developments adjacent to transit facilities or stations; bus,
 71 train, vessel, or other vehicle storage, cleaning, fueling,
 72 control, and maintenance facilities; and administrative and
 73 other office space necessary for the exercise by the commission
 74 of the powers and obligations granted under this part.

75 (7) "Transportation services" means the conveyance of
 76 persons or property, including mass transit services such as
 77 fixed-route bus service, fixed-guideway vehicle service,
 78 paratransit service, flex route or demand responsive service,
 79 and the planning and funding of transportation facilities.

80 Section 4. Section 343.1003, Florida Statutes, is created
 81 to read:

82 343.1003 Northeast Florida Regional Transportation
 83 Commission.—

84 (1) The Northeast Florida Regional Transportation
 85 Commission, an agency of the state, is created and established
 86 as a body politic and corporate, covering the six-county area
 87 comprised of Baker, Clay, Duval, Nassau, Putnam, and St. Johns

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88 Counties.

89 (2) The nine-member governing board of the commission shall
 90 be selected and serve as follows:

91 (a) The county commissions of Baker, Clay, Nassau, Putnam,
 92 and St. Johns Counties shall each appoint one person, who may be
 93 an elected official of such county. However, in order to ensure
 94 continuity on the initial governing board, the initial
 95 appointees under this paragraph shall draw lots at the first
 96 meeting of the governing board to determine which two members
 97 shall serve initial terms of 2 years, which member shall serve
 98 an initial term of 3 years, and which two members shall serve
 99 initial terms of 4 years.

100 (b) The City of Jacksonville shall be represented by four
 101 members, who may be elected officials of the city. Of the four
 102 members, the mayor of the City of Jacksonville shall appoint two
 103 members, and the Jacksonville City Council shall appoint two
 104 members. However, in order to ensure continuity on the initial
 105 governing board, the initial appointees shall draw lots at the
 106 first meeting of the governing board to determine which member
 107 shall serve an initial term of 2 years, which two members shall
 108 serve initial terms of 3 years, and which member shall serve an
 109 initial term of 4 years.

110 (c) An appointed member may not select or have a designee
 111 selected to serve in the absence of the member, whether such
 112 member is an elected official or otherwise. However, if an
 113 appointed member is designated by the appointing entity by
 114 title, such as the chair of a county commission or the chair of
 115 a transportation or planning agency, the successor or vice chair
 116 may serve for such appointee in his or her absence.

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117 (d) Except for the initial board, members shall be
 118 appointed for 4-year terms. A member may not serve more than two
 119 consecutive terms.

120 (3) The secretary of the department shall appoint a
 121 nonvoting advisor to the board.

122 (4) The board may create an advisory panel, with membership
 123 to be determined by the board, and may establish committees by
 124 and at the will of the chair, or upon vote of the board.

125 (5) The members of the board shall serve without
 126 compensation but are entitled to receive reimbursement from the
 127 commission for travel expenses and per diem incurred in
 128 connection with the business of the commission as provided in s.
 129 112.061. Persons appointed to a committee or an advisory panel
 130 shall also serve without compensation but may be entitled to per
 131 diem or travel expenses incurred in connection with the business
 132 of the commission as provided in s. 112.061.

133 (6) Notwithstanding s. 348.0003(4)(c), members of the board
 134 shall file a statement of financial interest with the Commission
 135 on Ethics pursuant to s. 112.3145.

136 (7) At its inaugural meeting, the board shall establish the
 137 duties and powers of its officers as set forth in subsection (8)
 138 and its initial rules of conduct and meeting procedures.

139 (8) At its inaugural meeting, and annually thereafter, the
 140 board shall elect a chair, vice chair, secretary, and treasurer
 141 from among its members, to serve for a term of 1 year. No person
 142 may hold the office of chair for more than two consecutive
 143 terms.

144 (9) The first meeting of the commission shall be held
 145 within 60 days after the creation of the commission.

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146 (10) Six members of the board constitute a quorum. The
 147 commission may meet upon the presence of a quorum. A vacancy on
 148 the board does not impair the ability of a quorum to exercise
 149 all rights and perform all duties of the commission.

150 (11) The commission may employ an executive director and an
 151 administrative assistant to the board and to the executive
 152 director. The commission may employ permanent or temporary
 153 staff, including consultants, as it determines necessary or
 154 convenient, or, subject to approval by their respective boards
 155 or administrative chiefs, may use the staff of:

156 (a) The Jacksonville Transportation Authority, its legal
 157 counsel, technical experts, engineers, and other administrative
 158 employees.

159 (b) The North Florida Transportation Planning Organization,
 160 for planning matters.

161 (c) The Northeast Florida Regional Council, for planning
 162 and coordination matters.

163 (d) The department.

164 (e) The Jacksonville Port Authority.

165 (f) The counties represented on the commission board, on an
 166 as-needed basis.

167 (12) An appointing county commission, or, in the case of
 168 Duval County, upon request of the mayor or the city council
 169 president, the Jacksonville City Council, may remove a member
 170 appointed by it for cause, including, but not limited to,
 171 failure to attend two or more meetings of the commission during
 172 any 9-month period.

173 (13) No liability on the part of, and no cause of action
 174 may arise against, any member for any action taken in the

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175 performance of his or her duties under this part.

176 Section 5. Section 343.1004, Florida Statutes, is created
177 to read:

178 343.1004 Commission powers and duties.—

179 (1) The express purposes of the commission are to improve
180 mobility and expand multimodal transportation options for
181 persons and freight throughout the six-county North Florida
182 region. The commission shall, at a minimum:

183 (a) Use the data contained in the Long Range Transportation
184 Plan of the North Florida Transportation Planning Organization
185 and other data to develop a multimodal and prioritized regional
186 transportation plan consisting of transportation projects of
187 regional significance; and

188 (b) Research and develop an implementation plan that
189 identifies available but not yet imposed, and potentially
190 developable, sources of funding to execute the regional
191 transportation plan. In developing the regional transportation
192 plan, the commission shall review and coordinate with the future
193 land use, capital improvements, and traffic circulation elements
194 of the counties' local government comprehensive plans, the
195 Strategic Regional Policy Plan of the Northeast Florida Regional
196 Council, and the schedules of other units of government having
197 transit or transportation authority within whose jurisdictions
198 the projects or improvements will be located in order to define
199 and resolve potential inconsistencies between such plans and the
200 commission's regional transportation plan. The commission shall
201 present the regional transportation plan and updates to the
202 governing bodies of the constituent counties within 90 days
203 after adoption. The commission shall update the regional

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204 transportation plan and the implementation plan at least every
205 other year.

206 (2) The commission may plan, develop, coordinate, and
207 promote transportation projects and transportation services of
208 regional significance which are identified in the commission's
209 regional transportation plan.

210 (a) Subject to available funding and with the approval of
211 the affected counties and transportation authorities, the
212 commission may provide transportation services of regional
213 significance which are identified in the regional transportation
214 plan.

215 (b) To ensure coordination of its plans with those of local
216 governments, the commission shall consult with local governments
217 concerning the commission's regional transportation plan.

218 (c) The commission may facilitate efforts to secure funding
219 commitments from federal and state sources, or from the
220 applicable counties, for the planning, development,
221 construction, purchase, operation, and maintenance of
222 transportation projects that are of regional significance or
223 that support intercounty mobility for persons or freight.

224 (3) In carrying out its purposes and powers, the commission
225 may request funding and technical assistance from the department
226 and from federal and local agencies. In order to carry out the
227 purposes and powers of the commission for its first 5 years, the
228 commission shall also timely request annually that each
229 constituent county appropriate a cash contribution of up to 30
230 cents per capita per year, based on the latest decennial census,
231 to support its budget; however, the contribution of Duval County
232 may not exceed 45 percent of the commission's budget for any

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233 fiscal year.

234 (4) The commission may exercise all powers necessary,
 235 appurtenant, convenient, or incidental to carrying out the
 236 purposes identified in subsections (1)-(3), including, but not
 237 limited to, the power to:

238 (a) Sue and be sued, implead and be impleaded, and complain
 239 and defend in all courts in its own name.

240 (b) Adopt and use a corporate seal.

241 (c) Apply for and accept grants from federal, state, local,
 242 or private sources for the carrying out of the purposes and
 243 powers of the commission.

244 (d) Partner with private sector business community entities
 245 that may further the commission's mission and engage the public
 246 in support of regional multimodal transportation improvements.

247 (e) Adopt rules, including bylaws and sanctions, for the
 248 regulation of the affairs and the conducting of business,
 249 including termination of membership in the commission for
 250 nonpayment of county contributions required under subsection
 251 (3).

252 (f) Advertise, market, and promote regional transit
 253 services and facilities, freight mobility plans and projects,
 254 and the general activities of the commission.

255 (g) Cooperate with other governmental entities and contract
 256 with other governmental agencies, including the Federal
 257 Government, the department, counties, transit and transportation
 258 authorities or agencies, municipalities, and expressway and
 259 bridge authorities.

260 (h) Purchase liability insurance directly from local,
 261 national, or international insurance companies which the

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262 commission is contractually and legally obligated to provide,
 263 notwithstanding s. 287.022(1).

264 (i) Make contracts and execute all instruments necessary or
 265 convenient for conducting its business.

266 (j) Form, alone or with one or more other agencies of the
 267 state or local governments, public benefit corporations to carry
 268 out the powers and obligations granted under this part or the
 269 powers and obligations of such other agencies or local
 270 governments.

271 (k) Do everything necessary or convenient for the conduct
 272 of its business and the general welfare of the commission in
 273 order to carry out the powers granted to it by this part or any
 274 other law.

275 (5) The commission may not pledge the credit or taxing
 276 power of the state or any political subdivision or agency
 277 thereof, nor may any of the commission's obligations be deemed
 278 to be obligations of the state or of any political subdivision
 279 or agency thereof, nor may the state or any political
 280 subdivision or agency thereof, except the commission, be liable
 281 for the payment of the principal of or interest on such
 282 obligations.

283 Section 6. Section 343.1005, Florida Statutes, is created
 284 to read:

285 343.1005 Transportation projects of regional significance.-
 286 Transportation projects of regional significance are those
 287 transportation facilities and transportation services within, in
 288 whole or in part, a regional transportation corridor identified
 289 in the commission report presented to the Legislature on or
 290 about December 31, 2012, or subsequently identified by the

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291 commission, which have one or more of the following
 292 characteristics:

293 (1) Exhibit a significant level of travel between counties
 294 or regions.

295 (2) Provide a primary connection between activity centers
 296 or municipalities.

297 (3) Exhibit a significant percentage of freight conveyance.

298 (4) Provide a primary connection to marine, aviation, or
 299 intermodal facilities.

300 (5) Provide a regional emergency evacuation route.

301 (6) Support or enhance the functionality of another
 302 identified transportation project of regional significance in
 303 the corridor by providing for regional movement or removing
 304 nonregional trips from other transportation projects of regional
 305 significance.

306 (7) Such other characteristics as the commission may
 307 determine relating to regional significance.

308 Section 7. Section 343.1006, Florida Statutes, is created
 309 to read:

310 343.1006 Plan coordination with other agencies.—The
 311 regional transportation plan and implementation plan shall be
 312 forwarded to the North Florida Transportation Planning
 313 Organization for inclusion in its long range transportation plan
 314 and other planning documents as required by law. To the extent
 315 feasible, the commission's planning activities, including the
 316 development and adoption of the regional transportation plan and
 317 the implementation plan, shall be coordinated with the work of
 318 the North Florida Transportation Planning Organization, the
 319 Northeast Florida Regional Council, and the department.

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320 Section 8. Section 343.1008, Florida Statutes, is created
 321 to read:

322 343.1008 Authority to contract.—Any county, municipality,
 323 drainage district, road and bridge district, school district, or
 324 any other political subdivision, board, commission, or
 325 individual, in or of the state, may make and enter into
 326 contracts, leases, conveyances, partnerships, or other
 327 agreements with the commission within the provisions and for the
 328 purposes of this part. The commission may make and enter into
 329 contracts, leases, conveyances, partnerships, interlocal
 330 agreements, and other agreements with any political subdivision,
 331 agency, or instrumentality of the state and any federal
 332 agencies, corporations, and individuals for the purpose of
 333 carrying out the provisions of this part and serving the
 334 purposes of the commission.

335 Section 9. Section 343.1009, Florida Statutes, is created
 336 to read:

337 343.1009 Exemption from taxation and assessment.—The
 338 effectuation of the authorized purposes of the commission
 339 created under this part is for the benefit of the people of this
 340 state, for the increase of their commerce and prosperity, and
 341 for the improvement of their health and living conditions, and,
 342 because the commission performs essential governmental functions
 343 in effectuating such purposes, the commission is not required to
 344 pay any taxes or assessments upon any property acquired or used
 345 by it for such purposes, or upon any rates, fees, rentals,
 346 receipts, income, or charges at any time received by it.

347 Section 10. Section 343.1010, Florida Statutes, is created
 348 to read:

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349 343.1010 Powers of commission are supplemental.-
 350 (1) The powers conferred by this part are supplemental to
 351 the existing powers of the North Florida Transportation Planning
 352 Organization, the Jacksonville Transportation Authority, the
 353 Northeast Florida Regional Council, the counties and the
 354 municipalities located therein, and the department. This part
 355 does not repeal any provisions of any other law, general,
 356 special, or local, but supplements such other laws in the
 357 exercise of the powers provided under this part and provides a
 358 complete method for the exercise of the powers granted in this
 359 part. The projects of the commission must comply with all
 360 applicable federal, state, and local laws. The projects of the
 361 commission undertaken pursuant to this part may be accomplished
 362 without regard to or necessity for compliance with the
 363 provisions, limitations, or restrictions contained in any other
 364 general, special, or local law except as specifically set forth
 365 in this part.

366 (2) This part does not repeal, rescind, or modify any other
 367 law relating to the North Florida Transportation Planning
 368 Organization, the Jacksonville Transportation Authority, or the
 369 department.

370 Section 11. Section 343.1011, Florida Statutes, is created
 371 to read:

372 343.1011 Public meetings and hearings.-
 373 (1) The commission shall hold regular public meetings at
 374 the times and locations determined by the chair but, if
 375 feasible, at least quarterly.

376 (2) Before the adoption of the regional transportation plan
 377 or the implementation plan, a public hearing shall be conducted

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378 by the commission in each of the counties affected, at least one
 379 of which must be before the board. Any interested party shall
 380 have the opportunity to be heard in person or by counsel and to
 381 introduce testimony in his or her behalf at the hearing.
 382 Reasonable notice of each public hearing must be published in a
 383 newspaper of general circulation in each county in which such
 384 hearings are required to be held, at least 7 days before the
 385 hearing. The commission shall comply with all applicable federal
 386 and state requirements related to new or altered transportation
 387 facilities or services.

388 Section 12. Section 343.1012, Florida Statutes, is created
 389 to read:

390 343.1012 Discretionary sales surtax.-The commission is not
 391 an "authority" for purposes of s. 212.055(1).

392 Section 13. Section 343.1013, Florida Statutes, is created
 393 to read:

394 343.1013 Repeal.-This part shall stand repealed on November
 395 30, 2018, unless:

396 (1) The commission has adopted the regional transportation
 397 plan and the implementation plan, and at least Clay, Duval,
 398 Nassau, and St. Johns Counties have adopted resolutions
 399 endorsing such plans; and

400 (2) Adequate funding sources to carry out the initial
 401 phases of such plans have been secured.

402 Section 14. Subsection (1) of section 120.52, Florida
 403 Statutes, is amended to read:

404 120.52 Definitions.-As used in this act:
 405 (1) "Agency" means the following officers or governmental
 406 entities if acting pursuant to powers other than those derived

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

596-02843-13 2013606c1

407 from the constitution:

408 (a) The Governor; each state officer and state department,
 409 and each departmental unit described in s. 20.04; the Board of
 410 Governors of the State University System; the Commission on
 411 Ethics; the Fish and Wildlife Conservation Commission; a
 412 regional water supply authority; a regional planning agency; a
 413 multicounty special district, but only if ~~when~~ a majority of its
 414 governing board is comprised of nonelected persons; educational
 415 units; and each entity described in chapters 163, 373, 380, and
 416 582 and s. 186.504.

417 (b) Each officer and governmental entity in the state
 418 having statewide jurisdiction or jurisdiction in more than one
 419 county.

420 (c) Each officer and governmental entity in the state
 421 having jurisdiction in one county or less than one county, to
 422 the extent they are expressly made subject to this chapter act
 423 by general or special law or existing judicial decisions.

424

425 This definition does not include a ~~any~~ municipality or legal
 426 entity created solely by a municipality; a ~~any~~ legal entity or
 427 agency created in whole or in part pursuant to part II of
 428 chapter 361; a ~~any~~ metropolitan planning organization created
 429 pursuant to s. 339.175; a ~~any~~ separate legal or administrative
 430 entity created pursuant to s. 339.175 of which a metropolitan
 431 planning organization is a member; an expressway authority
 432 pursuant to chapter 348 or any transportation authority or
 433 commission under chapter 343 or chapter 349; or a ~~any~~ legal or
 434 administrative entity created by an interlocal agreement
 435 pursuant to s. 163.01(7), unless any party to such agreement is

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

596-02843-13 2013606c1

436 otherwise an agency as defined in this subsection.

437 Section 15. This act shall take effect July 1, 2013.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AUDREY GIBSON
9th District

April 1, 2013

Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Last stop!

Chair Ring

I respectfully request that SB 606, relating to the Northeast Florida Regional Transportation Commission, be placed on the next committee agenda.

SB 606 creates the Northeast Florida Regional Transportation Commission. The bill is the result of consensus building among the six participating counties, Duval, Clay, St. Johns, Putnam, Baker, and Nassau, to coordinate transportation matters.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 9

REPLY TO:
 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1122

INTRODUCER: Governmental Oversight and Accountability Committee, Community Affairs Committee, and Senators Simpson and Dean

SUBJECT: Florida Fire Prevention Code

DATE: April 10, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	McKay	McVaney	GO	Fav/CS
3.			RC	
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:

CS/CS/SB 1122 establishes the following provisions related to the Florida Fire Prevention Code (FFPC):

- fire officials must enforce fire wall separation ratings for certain mercantile or business occupancies as defined in the Florida Building Code; and
- certain structures on agricultural property used in farming and ranching operations are exempt from the FFPC.

This bill amends section 633.0215 of the Florida Statutes.

II. Present Situation:

Fire Safety and Building Provisions in Florida

The Division of State Fire Marshall, housed within the Department of Financial Services, is responsible for protecting Floridians from fire hazards pursuant to ch. 633, F.S. Section 633.0215(1), F.S., requires the State Fire Marshal to adopt by rule the latest editions of

the National Fire Protection Association (NFPA) codes every three years. These NFPA codes serve as a base code for the Florida Fire Prevention Code (FFPC). Local governments enforce the FFPC as a minimum standard although they may adopt more stringent fire safety standards within their own jurisdictions subject to requirements provided in s. 633.025(4), F.S. The 2010 FFPC was adopted on December 31, 2011.

The FFPC operates in conjunction with the Florida Building Code (Building Code) adopted pursuant to ch. 553, F.S. The Building Code governs the design and construction of buildings and structures in the state and is developed and modified by the Florida Building Commission (Commission).¹ The Commission maintains and updates the Building Code and its component codes for plumbing, electrical, mechanical, energy conservation, accessibility, structural, and fire systems in buildings. The Building Code, like the FFPC, is adopted every three years and utilizes international codes as a foundation for Florida's base code. Enforcement of the Building Code is also similar to the FFPC: local governments bear this responsibility and may adopt more stringent code requirements within their own jurisdictions subject to provisions.²

Conflicts between the FFPC and the Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Commission in favor of requirements offering the greatest degree of life safety.³ If the State Fire Marshal and Commission are unable to agree on a resolution to a conflict, the issue goes to a mediator.

Fire Rated Walls or Partitions in the FFPC

Both the FFPC⁴ and the Building Code⁵ require that where different parts of a building comprise different categories of occupancy, those buildings must provide passive fire protection systems to slow or prevent a fire from spreading from one part of the building to another. For example, if a restaurant abuts a day care center or a hotel, the codes will require a fire wall between the two occupancies rated to certain wall fire-rating. These fire ratings are often expressed in "hours," expressing how long the wall can resist a fire of a certain temperature.⁶ The rules are intended to protect life safety, slow the spread of fire, and reduce insurance rates by restricting the ability of a commercial tenant to offload his or her fire risk onto adjoining tenant occupancies.

Chapter 6 of the FFPC outlines several occupancy classifications for buildings and structures. A business occupancy is defined as one used for the transaction of business other than mercantile; a mercantile occupancy is one used for the display and sale of merchandise. A separated occupancy is one in which two or more classifications exist separated by a fire-resistance rated assembly. Fire resistance ratings are permitted to be reduced by 1 hour where the building is protected throughout by an approved automatic sprinkler system.⁷

¹ Pursuant to s. 553.74, F.S., the Commission is a 25-member technical body appointed by the Governor subject to confirmation by the Senate. The Department of Business and Professional Regulation (DBPR) provides the Commission with administrative, technical, and legal support.

² See ss. 553.73(1)-(4) and 553.80, F.S.

³ See ss. 553.72(5) and 553.73(1)(d), F.S.

⁴ NFPA 101 s. 6.1.14.4.1, as specified in 6.1.14.4.2 and 6.1.14.4.3, and tables 6.1.14.4.1(a) and (b).

⁵ Florida Building Code sections 508.1, 508.2, 508.3 and 508.4.

⁶ Separations are categorized as 3-hour fire resistance-rated, 2-hour fire resistance-rated, or 1-hour fire resistance-rated.

⁷ In no case may the rating be reduced to less than 1 hour.

FFPC Classification of Agricultural Buildings

Inspection of agricultural buildings and surrounding property are classified using occupancies defined in the FFPC. Generally, these classifications will be business, storage, or industrial depending on the specific operation conducted within the structure or property; however, other occupancy sections may be applicable.

Exemptions in Chapter 633

Chapter 633 provides for the following current exemptions:

- A condominium, cooperative, or multifamily residential building that is less than four stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.⁸
- Provisions of ch. 633, F.S., do not apply to owners of property who are building or improving farm outbuildings.⁹ This means that structures such as barns need not be constructed to the fire code nor are they subject to fine by fire marshals or inspectors.

Agricultural Property Classification

For property to be classified as agricultural land, it must be used “primarily for bona fide agricultural purposes.”¹⁰ “Agricultural purposes” include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.¹¹

III. Effect of Proposed Changes:

The bill amends s. 633.0215, F.S., to require that a fire official enforce certain wall fire-rating occupancy separations as defined in the Florida Building Code. The ratings apply to one- and two-story structures that are less than 10,000 square feet whose occupancy is defined as business or mercantile.

The bill also exempts specified structures used in farming and ranching operations from the Florida Fire Prevention Code. To be exempt, the structure must be located on property classified for ad valorem purposes as agricultural, is part of a farming and ranching operation, employs fewer than 35 full-time equivalent employees, and is not used by the public for direct sales or as an educational outreach facility.

This exemption does not include structures used for residential or assembly operations.

The bill provides an effective date of July 1, 2013.

⁸ Section 633.0215, F.S.

⁹ Section 633.557, F.S. Owners acting as their own contractors when building or improving farm buildings are exempt from the construction contracting provisions in s. 489.103(7)(a), F.S..

¹⁰ Section 193.461(3)(b), F.S.

¹¹ Section 193.461(5), F.S.

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

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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:

According to Department of Financial Services (DFS), the proposed changes could result in an increase in insurance rates for the private sector and may also result in the requirement for additional fire protection systems such as automatic fire sprinkler and fire alarm systems.¹²

C. Government Sector Impact:

DFS predicts an indeterminate fiscal impact to local governments based upon individual community density and the staffing and equipment needs of fire departments.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to consider whether the “and” at the beginning of line 23 ought to be an “or,” in order to include operations that are solely ranching or solely farming.

¹² Florida Department of Financial Services, *Analysis of SB 1122* (Mar. 14, 2013).

¹³ *Id.*

Occupancy Separation

While the FFPC and the Building Code contain similar occupancy classification and separation language, the DFS advises in a bill analysis¹⁴ that the codes differ on the separation requirements between a business and mercantile occupancy. The FFPC requires a two-hour fire rated wall or partition between these use groups. This is more restrictive than the Florida Building Code. Generally, the two codes agree on the other occupancy separation requirements.

VIII. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on April 9, 2013:

The CS/CS removes a provision in the bill that allows local fire authorities to decrease fire flow requirements in rural areas. The CS/CS also clarifies the farming and ranching structure exemption from the Florida Fire Prevention Code, and modifies the exemption by applying the exemption to operations employing fewer than 35 full-time equivalent workers, instead of 25 full-time equivalent workers.

CS by Community Affairs on April 2, 2013:

- Revises specifications related to the decrease of fire flow requirements.
- Changes wall fire-rating enforcement provisions for certain structure occupancy separations.
- Modifies conditions that trigger an exemption from the Florida Fire Prevention Code for farming or ranching structures.

- B. **Amendments:**

None.

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

¹⁴ *Id.*



731492

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (16) is added to section 633.0215,
Florida Statutes, to read:

633.0215 Florida Fire Prevention Code.—

(16) (a) For one-story or two-story structures that are less
than 10,000 square feet, whose occupancy is defined in the
Florida Building Code and the Florida Fire Prevention Code as
business or mercantile, a fire official shall enforce the wall
fire-rating provisions for occupancy separation as defined in



731492

13 the Florida Building Code.

14 (b) A structure, located on property that is classified for
15 ad valorem purposes as agricultural, which is part of a farming
16 and ranching operation, which employs fewer than 35 full-time
17 equivalent workers, and which is not used by the public for
18 direct sales or as an educational outreach facility, is exempt
19 from the Florida Fire Prevention Code, including the national
20 codes and Life Safety Code incorporated by reference. This
21 paragraph does not include structures used for residential or
22 assembly occupancies, as defined in the Florida Fire Prevention
23 Code.

24 Section 2. This act shall take effect July 1, 2013.

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

27 And the title is amended as follows:

28 Delete everything before the enacting clause
29 and insert:

30 A bill to be entitled
31 An act relating to the Florida Fire Prevention Code;
32 amending s. 633.0215, F.S.; requiring fire officials
33 to enforce Florida Building Code provisions for
34 occupancy separation for certain structures with
35 certain occupancies; exempting certain farming and
36 ranching structures from the code; providing an
37 effective date.

By the Committee on Community Affairs; and Senators Simpson and Dean

578-03429-13

20131122c1

A bill to be entitled

An act relating to the Florida Fire Prevention Code; amending s. 633.0215, F.S.; providing that certain authorities in rural areas or small communities may decrease fire flow requirements; providing that fire officials shall enforce Florida Building Code provisions for occupancy separation for certain structures with certain occupancies; exempting certain farming and ranching structures from the code; providing an effective date.

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

Section 1. Subsection (16) is added to section 633.0215, Florida Statutes, to read:

633.0215 Florida Fire Prevention Code.—

(16) (a) Fire flow requirements may be decreased by the authority that has jurisdiction for isolated buildings or a group of buildings in rural areas or small communities, as defined in the Florida Fire Prevention Code, if that authority determines that the development of full fire flow requirements is impractical.

(b) For one-story or two-story structures that are less than 10,000 square feet, whose occupancy is defined in the Florida Building Code and the Florida Fire Prevention Code as business or mercantile, a fire official shall enforce the wall fire-rating provisions for occupancy separation as defined in the Florida Building Code.

(c) A farming or ranching structure, as part of an

Page 1 of 2

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

578-03429-13

20131122c1

operation that employs fewer than 25 full-time equivalent workers, calculated as cumulative hours worked divided by 40 hours, which is not used by the public for direct sales or as an educational outreach facility, is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.

Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic FLORIDA FIRE PREVENTION CODE Bill Number SB 1122
(if applicable)
Name LANCE PIERCE Amendment Barcode _____
(if applicable)
Job Title ASST. DIR. STATE LEGISLATIVE AFFAIRS
Address 315 S. CALHOUN ST. Phone _____
Street
TALLAHASSEE FL E-mail _____
City State Zip
Speaking: For Against Information
Representing FLORIDA FARM BUREAU

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9

Meeting Date

Topic _____ Bill Number 1122
(if applicable)
Name SIM SPRATT Amendment Barcode _____
(if applicable)
Job Title _____
Address PO Box 10011 Phone 850-228-1296
Street
TALLY FL 32302 E-mail simemagnoliastrategiesllc.com
City State Zip
Speaking: For Against Information
Representing Florida Nursery, Growers & LANDSCAPE Association

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1080

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Public Construction Projects

DATE: April 10, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Fav/CS
2.			CA	
3.			AGG	
4.			AP	
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:

CS/SB 1080 clarifies that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code, and the selection is made for each building or renovation.

The bill also requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available, and their price, fitness, and quality are equal. This tiebreaker preference does not apply to transportation projects for which federal aid funds are available, in either local or state construction contracting.

This bill substantially amends sections 255.20, 255.257, and 255.2575 of the Florida Statutes.

II. Present Situation:

Florida Energy Conservation and Sustainable Buildings Act

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,¹ which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that:

Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.²

Section 255.252(3), F.S., provides legislative intent that “it is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code” and “[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code.”

“Sustainable building rating or national model green building code” means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative’s Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.³

Section 255.257(4)(a), F.S., specifies that: [a]ll state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings.” Section 255.2575(2), F.S., provides that “[a]ll county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code.”⁴

The Department of Management Services (DMS) states on its website the following:

¹ Chapter 2008-227, L.O.F.

² Section 255.252(2), F.S.

³ Section 255.253(7), F.S.

⁴ This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency's ultimate decision must be made on the basis of long-term cost-effectiveness.⁵

Administrative rules adopted by DMS pertaining to sustainable building ratings⁶ implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.⁷ According to the DMS, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a “voluntary, consensus-based, market-driven” program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries.... For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.⁸
- **International Green Construction Code (IgCC)** is the “first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare....” The IgCC “creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*....”⁹
- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. “Green Globes offers a streamlined and affordable...way to advance the overall environmental performance and sustainability of commercial buildings. The program has modules supporting new construction...[and]...existing buildings.... It is suitable for a wide range of buildings from

⁵http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.

⁶ Chapter 60D, F.A.C.

⁷ Rule 60D-4.004(1)(c)1 and 2, F.A.C.

⁸ <http://new.usgbc.org/leed>.

⁹ <http://www.iccsafe.org/cs/igcc/pages/default.aspx>.

large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities.”¹⁰

- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation “dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which ‘green’ qualification and marketing are based.”¹¹

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida’s 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system, because LEED only awards points for timber that is grown under the Forest Stewardship Council requirements.¹² The DMS has chosen the LEED rating system to meet its own needs.

Florida Timber Industry

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.^{13, 14} Although forests cover about 50% of the state’s land area, Florida’s timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50% forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90% of its area. The peninsula is forested at 40% or less and a number of counties in southeast Florida are less than 10% forested.¹⁵

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.¹⁶

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Forest Stewardship Council, the American Tree Farm System, and the Sustainable Forestry Initiative are some commonly-used programs.

¹⁰ <http://www.thegbi.org/green-globes/>.

¹¹ <http://www.floridagreenbuilding.org/home>.

¹² “‘Backlash’ bill against LEED green-building certification program moving in House,” available at: <http://www.thefloridacurrent.com/article.cfm?id=32144596>.

¹³ Florida Forestry Association website: <http://floridaforest.org/about-us/fl-forests-facts/>.

¹⁴ 2010 Florida’s Forestry and Forest Product Industry Economic Impacts, by the Florida Forest Service (PDF file accessed at <http://floridaforest.org/about-us/fl-forests-facts/>).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

The Forest Stewardship Council (FSC) is an independent, non-profit organization. “[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard. . . . Certifiers are independent of FSC and the companies they are auditing.”¹⁷

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their “forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value.” Further, that the standard “has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world’s forests are certified.”¹⁸

The American Tree Farm System (ATFS), another commonly-used program, “offers certification to landowners who are committed to good forest management. . . . Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest. . . . protect[ing] economic, social and environmental benefits.”¹⁹

Florida Lumber Preference in Local Government Construction Contracting

Section 255.20, F.S., specifies requirements for local government construction contracting. Section 255.20(3), F.S., provides as follows:

All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in this state if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

III. Effect of Proposed Changes:

Section 1 amends s. 255.20, F.S., to exempt transportation projects for which federal aid funds are available from the operation of an existing tiebreaker preference for Florida lumber in local government construction contracting. The bill also reorganizes the provision.

¹⁷ Forest Stewardship Council website: <https://us.fsc.org/about-certification.198.htm>.

¹⁸ Sustainable Forestry Initiative website: <http://www.sfiprogram.org/sustainable-forestry-initiative/>.

¹⁹ American Tree Farm System website: <https://us.fsc.org/about-certification.198.htm>.

Section 2 amends s. 255.2575, F.S., to require all state agencies, when constructing public bridges, buildings, and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This tiebreaker language does not apply to transportation projects for which federal aid funds are available, and mirrors the language in s. 255.20(3), F.S., in section 1 of the bill.

Section 3 clarifies that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S. The selection is made for each building and renovation to a building.

The bill takes effect July 1, 2013.

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:

Florida-based lumber and timber companies could see an increase in sales.

C. Government Sector Impact:

The tiebreaker preference for Florida-based lumber and timber only applies if the price is equal to that of such products not produced in Florida, so there should be no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The tiebreaker preference for Florida lumber created in s. 255.2575, F.S., mirrors the existing local government tiebreaker preference in s. 255.20(3), F.S., and adds state agencies to the list of entities which must use such a preference. The preference will therefore be specified for local government entities in two sections, which is duplicative.

According to the DMS, virtually all construction performed by the DMS is of the commercial, non-combustible type. The wood or timber found within this construction is the plywood specified for monolithic concrete forms, not applicable to the requirement under this bill, or for light framing or millwork. In this construction, the department does not procure “wood or timber” directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.²⁰

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 Governmental Oversight and Accountability on April 9, 2013:

The CS exempts transportation projects for which federal aid funds are available from the operation of the tiebreaker preference for Florida lumber in local and state construction contracting.

- B. **Amendments:**

None.

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

²⁰ Department of Management Services’ bill analysis of SB 1080, dated February 29, 2013.



312322

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 255.20, Florida
Statutes, is amended to read:

255.20 Local bids and contracts for public construction
works; specification of state-produced lumber.-

(3) (a) All county officials, boards of county
commissioners, school boards, city councils, city commissioners,
and all other public officers of state boards or commissions
that are charged with the letting of contracts for public work,



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13 for the construction of public bridges, buildings, and other
14 structures must specify in the contract lumber, timber, and
15 other forest products produced and manufactured in this state,
16 if wood is a component of the public work, and if such products
17 are available and their price, fitness, and quality are equal.

18 (b) This subsection does not apply:

19 1. To plywood specified for monolithic concrete forms.

20 2. If the structural or service requirements for timber for
21 a particular job cannot be supplied by native species.~~or~~

22 3. If the construction is financed in whole or in part from
23 federal funds with the requirement that there be no restrictions
24 as to species or place of manufacture.

25 4. To transportation projects for which federal aid funds
26 are available.

27 Section 2. Subsection (4) is added to section 255.2575,
28 Florida Statutes, to read:

29 255.2575 Energy-efficient and sustainable buildings.-

30 (4) (a) All state agencies, county officials, boards of
31 county commissioners, school boards, city councils, city
32 commissioners, and all other public officers of state boards or
33 commissions that are charged with the letting of contracts for
34 public work, for the construction of public bridges, buildings,
35 and other structures must specify in the contract lumber,
36 timber, and other forest products produced and manufactured in
37 this state, if wood is a component of the public work, and if
38 such products are available and their price, fitness, and
39 quality are equal.

40 (b) This subsection does not apply:

41 1. To plywood specified for monolithic concrete forms.



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42 2. If the structural or service requirements for timber for
43 a particular job cannot be supplied by native species.

44 3. If the construction is financed in whole or in part from
45 federal funds with the requirement that there be no restrictions
46 as to species or place of manufacture.

47 4. To transportation projects for which federal aid funds
48 are available.

49 Section 3. Paragraph (a) of subsection (4) of section
50 255.257, Florida Statutes, is amended to read:

51 255.257 Energy management; buildings occupied by state
52 agencies.-

53 (4) ADOPTION OF STANDARDS.-

54 (a) Each ~~All~~ state agency ~~agencies~~ shall use ~~adopt~~ a
55 sustainable building rating system or ~~use~~ a national model green
56 building code for each ~~all~~ new building ~~buildings~~ and renovation
57 ~~renovations~~ to an existing building ~~buildings~~.

58 Section 4. This act shall take effect July 1, 2013.

59
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete everything before the enacting clause
63 and insert:

64 A bill to be entitled
65 An act relating to public construction projects;
66 amending ss. 255.20 and 255.2575, F.S.; requiring
67 governmental entities to specify certain products
68 associated with public works projects; providing for
69 applicability; amending s. 255.257, F.S.; requiring
70 state agencies to use certain building rating systems



312322

71
72

and building codes for each new construction and
renovation project; providing an effective date.

By Senator Evers

2-00740B-13

20131080__

A bill to be entitled

An act relating to public construction projects; amending s. 255.257, F.S.; requiring state agencies to use a sustainable building rating system for construction and renovation projects; amending s. 255.2575, F.S.; requiring state agencies and other entities to specify certain products associated with public works projects; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(4) ADOPTION OF STANDARDS.—

(a) Each ~~All~~ state agency ~~agencies~~ shall use ~~adopt~~ a sustainable building rating system or ~~use~~ a national model green building code for each ~~all~~ new building ~~buildings~~ and renovation ~~renovations~~ to an existing building ~~buildings~~.

Section 2. Subsection (4) is added to section 255.2575, Florida Statutes, to read:

255.2575 Energy-efficient and sustainable buildings.—

(4) All state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest

Page 1 of 2

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

2-00740B-13

20131080__

products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal.
This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

Section 3. This act shall take effect July 1, 2013.

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Transportation, *Vice Chair*
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Reapportionment
Rules - Subcommittee on Ethics and Elections

SENATOR GREG EVERS

2nd District

April 9, 2013

Senator Jeremy Ring, Chair
Committee on Governmental Oversight
And Accountability
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Chairman Ring,

SB 1080, pertaining to Public Construction Projects, and SB 1424 pertaining to Public Records are on your agenda today. I respectfully request my legislative aide, Molly Caddell, be permitted to present the bill in my place. I appreciate your favorable consideration upon this request.

Sincerely,

Greg Evers

Cc: Joe McVaney, Staff Director

REPLY TO:

- 598 North Ferdon Boulevard, Crestview, Florida 32536 (850) 689-0556
- 5224 Willing Street, Milton, Florida 32570 (850) 983-5550
- 24 North Tarragona, Pensacola, Florida 32502 (850) 595-0213
- 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5000

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Public Construction Bill Number 1080
Name Cindy Littlejohn Amendment Barcode 589-0346-13
Job Title Consultant (if applicable)
Address 310 W. College Phone 850-222-7535
Street Tallahassee, FL 32301 E-mail cindy@littlejohn
City State Zip mann.com

Speaking: For Against Information

Representing Plum Creek Timber Co.

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic PUBLIC CONSTRUCTION PROJECTS Bill Number SB 1080
Name LANCE PIERCE Amendment Barcode _____
Job Title ASST. DIR. STATE LEGISLATIVE AFFAIRS (if applicable)
Address 315 S. CALHOUN ST. Phone _____
Street TALLAHASSEE FL E-mail _____
City State Zip

Speaking: For Against Information

Representing FLORIDA FARM BUREAU

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Public Construction
Name Chuck Littlejohn
Job Title LITTLE JOHN MANN + ASSC

Bill Number SB 1080
(if applicable)
Amendment Barcode _____
(if applicable)

Address 310 W. COLLEGE AVE
Street
TALL FL 32312
City State Zip

Phone (850) 222-7535
E-mail chuck@littlejohnmann.com

Speaking: For Against Information

Representing FLORIDA LANDS COUNCIL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Public Construction Projects
Name Alan Shelby
Job Title EVP

Bill Number 1080
(if applicable)
Amendment Barcode _____
(if applicable)

Address 402 E. Jefferson St.
Street
Tallahassee FL 32317
City State Zip

Phone _____
E-mail _____

Speaking: For Against Information

Representing Florida Forestry Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: April 2, 2013

I respectfully request that **Senate Bill #1080**, relating to Public Construction Projects, be placed on the:

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



Senator Greg Evers
Florida Senate, District 2

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1424

INTRODUCER: Senator Evers

SUBJECT: Public Records/Personal Identifying Information/Payment of Tolls

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Favorable
2.	Naf	McVaney	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1424 expands an existing public records exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges. Specifically, this bill removes references to specific payment types and instead provides that the exemption applies to personal identifying information *of drivers who use toll facilities in the state* that is held by the Department of Transportation, a county, or an expressway authority for the purpose of *paying, prepaying, or collecting tolls and associated charges*.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill amends section 338.155 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.¹³ The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.¹⁴ DOT has implemented two programs (SunPass and Toll-By-Plate) for electronic toll collections.

SunPass¹⁵ is an electronic system of toll collection accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass account information includes the license plate number, address, and credit card information.¹⁶

The Toll-By-Plate¹⁷ program, established by DOT in 2010, is an image based system of toll collection available on the Homestead Extension of Florida's Turnpike, from Florida City to Miramar in Miami-Dade County. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.¹⁸ Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.¹⁹

Public Records Exemption: Electronic Payment of Tolls

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt²⁰ from public records requirements. This provision was first adopted in 1996.²¹

¹³ See s. 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and handicapped persons.

¹⁴ Section 338.155(1), F.S.

¹⁵ Rule 14-15.0081, F.A.C.

¹⁶ Information on SunPass is available at, <http://www.floridasturnpike.com/all-electronictolling/SunPass.cfm> (last visited March 12, 2013).

¹⁷ Rule 14-100.005, F.A.C.

¹⁸ Information on toll-by-plate is available at, <http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm> (Last visited March 12, 2013).

¹⁹ Information on toll-by-plate accounts can be found at,

<https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (Last visited March 12, 2013).

²⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from

Recently, DOT has expanded its use of electronic toll collection with the Toll-By-Plate video billing. As a consequence, the current public records exemption does not protect personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

III. Effect of Proposed Changes:

The bill amends s. 338.155(6), F.S., to expand the existing public records exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges. Specifically, this bill removes references to specific payment types and instead provides that the exemption applies to personal identifying information *of drivers who use toll facilities in the state* that is held by the Department of Transportation, a county, or an expressway authority for the purpose of *paying, prepaying, or collecting tolls and associated charges*. This would include personal identifying information of Toll-By-Plate customers.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill's effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in 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 necessity statement, it requires a two-thirds vote for passage.

Public Necessity Statement

public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

²¹ Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

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

This bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the expansion of the public records exemption. In addition, agencies could incur costs associated with redaction of the protected information prior to releasing a record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of an agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Retroactive Application

The Supreme Court of Florida 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.²² The bill does not contain a provision requiring retroactive application. Therefore, the public records exemption would apply prospectively, but the Toll-By-Plate program began in 2010.²³

Applicability of Exemption to “Drivers”

The expanded public records exemption applies to drivers who use toll facilities in this state. However, the driver of a vehicle may not necessarily be the person to whom a Toll-by-Plate

²² *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

²³ Information received from the Florida Department of Transportation, March 13, 2013 (email on file with the Transportation and Highway Safety Subcommittee).

account is registered. Therefore, the Legislature may wish to consider removing reference to “drivers” in the expanded exemption.

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.

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

By Senator Evers

2-01584-13

20131424__

A bill to be entitled

An act relating to public records; amending s.

338.155, F.S.; clarifying provisions; providing that

personal identifying information about individuals

related to the payment of tolls, which is held by the

Department of Transportation and certain other

entities, is exempt from public records requirements;

providing for future legislative review and repeal of

the exemption under the Open Government Sunset Review

Act; providing legislative findings and a statement of

public necessity; providing an effective date.

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

Section 1. Subsection (6) of section 338.155, Florida Statutes, is amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(6) (a) Personal identifying information of drivers who use toll facilities in this state which is held by ~~provided to, acquired by, or in the possession of~~ the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges using a credit card, charge card, or check for the prepayment of electronic toll facilities charges to the department, a county, or an expressway authority is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government

Page 1 of 2

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

2-01584-13

20131424__

Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution personal identifying information about individuals which is held by the Department of Transportation, a county, or an expressway authority in connection with the payment, prepayment, or collection of tolls. The exemption puts individuals who pay with the TOLL-BY-PLATE system on equal footing with those who prepay with a check, charge card, credit card or pay cash at the toll booth. The exemption also protects the public by exempting information about an individual's use of the toll road system. The exemption promotes the use of the electronic toll collection system, which is a more efficient and effective collection system for tolls because the use of the TOLL-BY-PLATE system or prepaying with a check, charge card, or credit card saves an individual time in passing through toll facilities, compared to those who pay cash, and costs less to administer. The exemption also protects the privacy of individuals and promotes the right to be free from unreasonable government intrusion by prohibiting the public disclosure of private information about an individual's finances and location.

Section 3. This act shall take effect July 1, 2013.

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Transportation, *Vice Chair*
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Reapportionment
Rules - Subcommittee on Ethics and Elections

SENATOR GREG EVERS

2nd District

April 9, 2013

Senator Jeremy Ring, Chair
Committee on Governmental Oversight
And Accountability
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Chairman Ring,

SB 1080, pertaining to Public Construction Projects, and SB 1424 pertaining to Public Records are on your agenda today. I respectfully request my legislative aide, Molly Caddell, be permitted to present the bill in my place. I appreciate your favorable consideration upon this request.

Sincerely,

Greg Evers

Cc: Joe McVaney, Staff Director

REPLY TO:

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- 5224 Willing Street, Milton, Florida 32570 (850) 983-5550
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MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1848

INTRODUCER: Banking and Insurance Committee

SUBJECT: Public Records/Inspector General/Citizens Property Insurance Corporation

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess		bi SPB 7136 as Introduced
2.	Naf	McVaney	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1848 is linked to SB 1770, which, in pertinent part, creates an Office of the Inspector General of Citizens Property Insurance Corporation (Citizens). SB 1848 expands an existing public records exemption for Citizens records to also include:

- The identity of an individual who makes an allegation to the inspector general that an employee or agent of Citizens has committed a specified act or violation; and
- Information relating to an investigation of such an alleged act or violation.

The bill specifies circumstances under which such an identity or investigative information may be released.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill substantially amends the section 627.351 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹³ Citizens is not a private insurance company.¹⁴ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.

Citizens Inspector General

Citizens currently does not have an inspector general and is not required by law to have one. The Chief of Internal Audit has job duties and responsibilities similar to an inspector general. The Chief of Internal Audit position was created in Citizens in 2006 and Citizens' first Chief of Internal Audit started in January 2007. The position has been filled almost continuously since that time, with Citizens employing four Chiefs of Internal Audit since 2007.

Generally, the duties of the Chief of Internal Audit include: fostering and promoting accountability and integrity in Citizens; holding the Citizen's leadership, management and staff accountable for efficient, cost-effective operation; and preventing, identifying, and eliminating fraud, waste, corruption, illegal acts, and abuse. Specific duties and responsibilities for the position are contained in s. 627.351(6)(i), F.S. The Chief of Internal Audit carries out his duties primarily through audits, management reviews and investigations.

From December 2010 until October 2012, Citizens also had an Office of Corporate Integrity. The office handled employee complaints, particularly those that could indicate ethics violations and internal fraud. From December 2010 until July 2012, the employees in this office reported to Citizens' General Counsel and Chief Legal Officer. Thereafter, they reported to the Citizens' Chief of Internal Audit. The Office was disbanded by Citizens' Board in October 2012, but its functions were absorbed by other Citizens' staff, including the Office of Internal Audit, the Ethics Officer, and the Employee Relations Office.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ "Admitted market" means insurance companies licensed to transact insurance in Florida.

¹⁴ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

SB 1770 (linked to this bill)

SB 1770, in pertinent part, establishes the Office of the Inspector General within Citizens to ensure accountability, integrity, and efficiency. The inspector general is appointed by the Financial Services Commission and may be removed from office only by the commission. The inspector general is under the supervision of the commission until June 30, 2014, after which he or she reports to the chair of the board of governors.

The inspector general's specified duties are to initiate, direct, coordinate, participate in, and perform studies, reviews, evaluations, and investigations designed to assess management practices; compliance with laws, rules, and policies; and program effectiveness and efficiency. In addition, the inspector general must complete special projects and perform other duties as requested by the Financial Services Commission.

At least annually, the inspector general must report to the President of the Senate and the Speaker of the House of Representatives the extent to which policies are returned to the voluntary market from the corporation's clearinghouse. Such a report must include an analysis regarding the effectiveness of the clearinghouse for depopulation of Citizens.

III. Effect of Proposed Changes:

This bill expands an existing public records exemption that makes specified Citizens records confidential and exempt. Specifically, the bill adds to the exemption the name or identity of an individual who, in good faith, alleges, or provides information relating to an allegation, to the Office of the Inspector General that an employee or agent of Citizens:

- Violated a federal, state, or local law, ordinance, or rule;
- Committed an act of fraud, waste, abuse, malfeasance, or mismanagement;
- Committed employee misconduct; or
- Violated a policy of the corporation.

The bill authorizes disclosure of such person's name or identity:

- With the written consent of the individual; or
- Pursuant to a court order.

The bill also adds to the existing Citizens public records exemption all information relating to an investigation of such a possible violation or act. The bill provides that such information is confidential or exempt until the inspector general completes the investigation and determines such violation or act occurred. If the inspector general determines that the alleged violation or act did not occur, the information remains confidential and exempt. Such information may be disclosed at any time to:

- A current member of the Financial Services Commission;
- The current President of the Senate; or
- The current Speaker of the House of Representatives.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

This bill will take effect on the same date that SB 1770 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill expands a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to contain a public necessity statement justifying the exemption. This bill expands a public records exemption; therefore, it contains 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:

This bill could create a minimal fiscal impact on Citizens, because staff responsible for complying with public records requests could require training related to the expansion of the public records exemption. In addition, Citizens could incur costs associated with redaction of the confidential and exempt information prior to releasing the record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of Citizens.

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.

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

By the Committee on Banking and Insurance

597-03438-13

20131848__

A bill to be entitled

An act relating to public records; providing a public records exemption for the identity of individuals who make certain allegations or provide certain information to the inspector general of Citizens Property Insurance Corporation and for information relating to a resulting investigation; providing for future review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. With respect to the Office of the Inspector General of the corporation:

(1) The name or identity of an individual who, in good faith, alleges, or provides information relating to an allegation, to the Office of the Inspector General of the corporation that an employee or agent of the corporation violated a federal, state, or local law, ordinance, or rule; committed an act of fraud, waste, abuse, malfeasance, or mismanagement; committed employee misconduct; or violated a policy of the corporation. The name or identity of such an individual may be disclosed only with the written consent of the individual or pursuant to a court order.

(2) All information relating to an investigation of a possible violation or act described in this section conducted by the inspector general is confidential and exempt until he or she completes the investigation and determines such violation or act

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occurred. If the inspector general determines that such violation or act did not occur, the information remains confidential and exempt. Information relating to an investigation may be disclosed at any time to a current member of the Financial Services Commission or the current President of the Senate or Speaker of the House of Representatives.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 1 of this act shall be codified as subparagraph j. of subparagraph 1. of paragraph (x) of subsection (6) of section 627.351, Florida Statutes, and the section and subsections in section 1 of this act may be redesignated to conform to that codification.

Section 3. (1) The Legislature finds and declares that it is a public necessity that the identity of an individual who makes an allegation, or provides information relating to an allegation against an employer or agent of the corporation regarding a violation of law, ordinance, rule, or corporation policy, or an act of fraud, waste, abuse, malfeasance, mismanagement, or employee misconduct, which is held by the Office of Inspector General of the Citizens Property Insurance Corporation, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the inspector general concludes any resulting evaluation, audit, or investigation. This exemption is necessary because failure to provide such protection could make individuals who provide information vulnerable to harassment or

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59 retaliation from persons who may be the subject of such
60 allegations and resulting investigations and have a chilling
61 effect that discourages individuals from disclosing information
62 that would facilitate the ability of the inspector general to
63 carry out his or her investigatory duties.

64 (2) The Legislature finds that it is a public necessity
65 that information relating to the inspector general's
66 investigation of a possible violation of law, ordinance, rule,
67 or corporation policy, or an act of fraud, waste, abuse,
68 malfeasance, mismanagement, or employee misconduct, be
69 confidential and exempt from s. 119.07(1), Florida Statutes, and
70 s. 24(a), Art. I of the State Constitution. This exemption is
71 necessary because the release of such information could
72 potentially be defamatory to an individual under investigation,
73 cause unwarranted damage to the good name or reputation of such
74 individual, or significantly impair the investigation. The
75 exemption creates a secure environment in which the inspector
76 general may conduct an investigation.

77 Section 4. This act shall take effect on the same date that
78 SB 1770 or similar legislation takes effect, if such legislation
79 is adopted in the same legislative session or an extension
80 thereof and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1850

INTRODUCER: Banking and Insurance Committee

SUBJECT: Public Records/Citizens Property Insurance Corporation Clearinghouse

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess		bi SPB 7140 as Introduced
2.	Naf	McVaney	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1850 is linked to SB 1770, which, in pertinent part, creates a Citizens Property Insurance Corporation clearinghouse. SB 1850 provides that underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the clearinghouse which are used to identify and select risks from the clearinghouse are confidential and exempt from public records requirements.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill substantially amends a currently nonexistent section of the Florida Statutes that is created by the linked bill, SB 1770.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹³ Citizens is not a private insurance company.¹⁴ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.

SB 1770 (linked to this bill)

This bill is linked to SB 1770, which, in pertinent part, requires Citizens to implement a clearinghouse by July 1, 2013. All new and renewal applications, excluding commercial residential, must be submitted to the clearinghouse before Citizens can bind or renew coverage.

The clearinghouse:

- Must develop an application process to facilitate private insurers in determining whether or not to make an offer of coverage through the clearinghouse.
- Must enter into contracts with Florida property insurance companies to participate in the clearinghouse and must accept appointments from voluntary market insurers.
- Must require all new and renewal applicants to be submitted to the clearinghouse to see if there are any offers of coverage from an authorized insurer.
- Must require all new applications for coverage to be subject to a 48-hour period that allows a private insurer participating in the clearinghouse to select applicants for coverage.
- Allows an applicant to accept an offer from a surplus lines insurer if the applicant does not receive an offer of coverage from admitted insurers.
- May charge a reasonable fee as a percentage of an agent's commission to offset the costs of the clearinghouse. Insurers participating in the clearinghouse are not required to pay a fee or use the clearinghouse.

All licensed insurers are authorized to participate in the clearinghouse, but participation is not mandatory.

III. Effect of Proposed Changes:

The bill provides that underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the Citizens clearinghouse which are used to identify and select risks from the clearinghouse are confidential and exempt from public records disclosure requirements.

¹³ "Admitted market" means insurance companies licensed to transact insurance in Florida.

¹⁴ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This act shall take effect on the same date that SB 1770 or similar legislation creating s. 627.3518, Florida Statutes, the Citizen's Property Insurance Corporation clearinghouse, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to contain a public necessity statement justifying the exemption. This bill creates a public records exemption; therefore, it contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Underwriting guidelines, manuals, rating information and other underwriting criteria belonging to insurers participating in the Citizens clearinghouse program will be protected, thereby preventing release of information that could put such insurers at a competitive disadvantage.

C. Government Sector Impact:

This bill could create a minimal fiscal impact on Citizens, because staff responsible for complying with public records requests could require training related to the expansion of the public records exemption. In addition, Citizens could incur costs associated with redaction of the confidential and exempt information prior to releasing the record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of Citizens.

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

597-03437-13

20131850__

A bill to be entitled

An act relating to public records; amending s. 627.3518, F.S.; providing an exemption from public records requirements for all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program; providing for future review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (11) is added to section 627.3518, Florida Statutes, as created by SB 1770 or similar legislation, 2013 Regular Session, to read:

627.3518 Citizens Property Insurance Corporation clearinghouse.-

(11) Underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's clearinghouse which are used to identify and select risks from the clearinghouse are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds and declares that it is a

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public necessity that underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the Citizens Property Insurance Corporation's clearinghouse which are used to identify and select risks from the clearinghouse be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The program will facilitate obtaining offers of coverage from authorized insurers for new applicants for insurance coverage with the corporation and for policyholders seeking to renew existing insurance coverage with the corporation. Obtaining offers of coverage from authorized insurers through the clearinghouse will provide more choices for consumers and reduce the corporation's exposure and potential for imposing assessments on its policyholders and policyholders in the private market. In order for the program to efficiently determine whether there are authorized insurers interested in making an offer of coverage for a particular risk, a substantial amount of detailed data from participating insurers must be provided to the program. Public disclosure of the detailed data could result in a substantial chilling effect on insurer participation in the program and thereby undermine the program's success.

Section 3. This act shall take effect on the same date that SB 1770 or similar legislation creating s. 627.3518, Florida Statutes, the Citizen's Property Insurance Corporation clearinghouse, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 834

INTRODUCER: Banking and Insurance and Senator Simmons

SUBJECT: Public Records/Proprietary Business Information/Office of Insurance Regulation

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Fav/CS
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</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:

CS/SB 834, which is linked to CS/SB 836, creates a public records exemption to incorporate the necessary confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards.

The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from public records requirements. The bill specifies circumstances under which such confidential and exempt information may be disclosed.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. It also provides a statement of public necessity as required by the Florida Constitution.

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

The bill creates section 624.4212 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) is part of the Financial Services Commission (commission), which is composed of the Governor and Cabinet members. The OIR is responsible for activities of the commission relating to regulation and investigation of violations of the Insurance Code,¹³ which governs insurance institutions.¹⁴

National Association of Insurance Commissioners

The OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. Once accredited, a member state is subject to a full accreditation review every five years. The OIR is slated for its next accreditation review during the fall of 2013.

Supervisory Colleges

Supervisory colleges are essentially interstate meetings for insurance regulators to focus on large insurers that write significant amounts of insurance in multiple jurisdictions.

Public Records Exemptions and the Insurance Code

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including:

- Trade secret documents;¹⁵
- Risk-based capital information;¹⁶
- Information related to orders of supervision;¹⁷ and
- Personal consumer and personal financial information.¹⁸

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Comprised of ss. 624.01-624.24, F.S.

¹⁴ See s. 20.121(3)(a)1., F.S.

¹⁵ Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*

¹⁶ Section 624.40851, F.S.

¹⁷ Section 624.82, F.S.

¹⁸ Section 624.23, F.S.

Section 624.319, F.S., makes OIR's examination and investigation reports and workpapers confidential during the pendency of an examination or investigation. The exemption allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no general statutory exemption for information claimed to be proprietary business information, the Legislature has created a number of exemptions from ch. 119, F.S., for proprietary business information held by certain agencies. This term is generally defined by the statute creating the exemption and frequently includes trade secrets.

Currently, the Insurance Code contains a specific exemption relating to "proprietary business information" held by the OIR, but it relates only to such information provided by a title insurance agency or insurer.¹⁹

CS/SB 836: Insurer Solvency

The NAIC periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not currently included in the Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation this fall. Therefore, among other NAIC model act components, CS/SB 836 implements the following NAIC confidentiality requirements:

- *NAIC Property and Casualty Actuarial Opinion Model Law*
Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public.²⁰ The NAIC model law provides that states must require insurers to provide actuarial opinion summaries and that the regulators must keep these summaries confidential.
- *Model Holding Company Act & Regulations*
In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators' ability to obtain and evaluate financial information from affiliates, especially regarding "enterprise risk."²¹ In adopting the NAIC model act, CS/SB 836 requires persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report to the OIR.

¹⁹ Section 626.94195, F.S.

²⁰ Section 624.424, F.S.

²¹ Enterprise risk is "any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition." Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

CS/SB 836 also makes the following changes that are relevant to the public records exemption created by this bill:

- Provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR.
- Provides for the OIR's participation in a supervisory college, as the NAIC has also made establishment and participation in supervisory colleges an accreditation standard.

III. Effect of Proposed Changes:

This bill, which is linked to CS/SB 836, creates a public records exemption to incorporate the necessary confidentiality elements for the OIR to meet the NAIC's accreditation standards.

The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from public records requirements. It defines "proprietary business information" to mean information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes, but is not limited to:
 - Trade secrets as defined in the Uniform Trade Secrets Act²² that comply with the Insurance Code's trade secret document marking requirements.
 - Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
 - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
 - Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
 - Internal auditing controls and reports of internal auditors.
 - The actuarial opinion summary required under s. 624.424(1)(b), F.S., and the documents, material, and other information related thereto.

²² Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- A notice filed with the OIR by the person or affiliated person who seeks to divest controlling stock in an insurer.
- The insurers' annual registration statement that is required by CS/SB 836 and all documents, materials, and other information related thereto.
- The enterprise risk report required by CS/SB 836 and the documents, materials, and other information related to the enterprise risk report.
- Information provided to or obtained by the OIR pursuant to participation in a supervisory college.
- Information received from another governmental entity or the NAIC which is confidential or exempt if held by that entity for use by the OIR in the performance of its official duties.

The bill authorizes the OIR to disclose the confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to the OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution

The bill will take effect October 1, 2013, if CS/SB 836 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a new public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill creates a new public records exemption; therefore, it contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public records exemption created by the bill may have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

C. Government Sector Impact:

The bill could create a minimal fiscal impact on the OIR, because staff responsible for complying with public records requests could require training related to creation of the new public records exemption. The OIR could also incur costs associated with redaction of the confidential and exempt information prior to releasing a record. The costs would be absorbed, however, as part of the day-to-day responsibilities of the OIR.

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 CS.)

CS by Banking and Insurance on April 3, 2013:

The CS:

- Clarifies that the public records exemption is applicable to a trade secret as defined in the Uniform Trade Secrets Act and specifies additional types of information that constitute proprietary business information;
- Removes an outdated reference to the Open Government Sunset Review Act of 1995 and replaces it with the Open Government Sunset Review Act; and
- Links the effective date of the CS to the passage of CS/SB 836.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Simmons

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A bill to be entitled

An act relating to public records; creating s. 624.4212, F.S.; creating an exemption from public records requirements for proprietary business information submitted to the Office of Insurance Regulation; defining the term "proprietary business information"; providing exceptions; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 624.4212, Florida Statutes, is created to read:

624.4212 Confidentiality of proprietary business information.—Proprietary business information held by the Office of Insurance Regulation in accordance with its statutory duties with respect to insurer solvency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(1) As used in this section, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and which:

(a) Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's

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business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

(b) Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and

(c) Includes, but is not limited to:

1. Trade secrets as defined in s. 688.002 which comply with s. 624.4213.

2. Information relating to competitive interests the disclosure of which would impair the competitive business of the provider of the information.

3. The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.

4. Information relating to bids or other contractual data the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.

5. Internal auditing controls and reports of internal auditors.

6. The actuarial opinion summary required under s. 624.424(1)(b) and the documents, materials, and other information related thereto.

7. A notice filed with the office by the person or affiliated person who seeks to divest controlling stock in an

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59 insurer pursuant to s. 628.461.

60 8. The filings required under s. 628.801 and all documents,
61 materials, and other information related thereto.

62 9. The enterprise risk report required under ss. 628.461(3)
63 and 628.801 and the documents, materials, and other information
64 related to the enterprise risk report.

65 10. Information provided to or obtained by the office
66 pursuant to participation in a supervisory college established
67 under s. 628.805.

68 11. Information received from another governmental entity
69 or the National Association of Insurance Commissioners which is
70 confidential or exempt if held by that entity for use by the
71 office in the office's performance of its duties.

72 (2) The office may disclose confidential and exempt
73 proprietary business information:

74 (a) If the insurer to which it pertains gives prior written
75 consent;

76 (b) Pursuant to a court order;

77 (c) To the American Academy of Actuaries upon a request
78 stating that the information is for the purpose of professional
79 disciplinary proceedings and specifying procedures satisfactory
80 to the office for preserving the confidentiality of the
81 information;

82 (d) To other states, federal and international agencies,
83 the National Association of Insurance Commissioners and its
84 affiliates and subsidiaries, and state, federal, and
85 international law enforcement authorities, including members of
86 a supervisory college described in s. 628.805 if the recipient
87 agrees in writing to maintain the confidential and exempt status

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88 of the document, material, or other information, and has
89 verified in writing its legal authority to maintain such
90 confidentiality; or

91 (e) For the purpose of aggregating information on an
92 industrywide basis and disclosing the information to the public
93 only if the specific identities of the insurers, or persons or
94 affiliated persons, are not revealed.

95 (3) This section is subject to the Open Government Sunset
96 Review Act in accordance with s. 119.15 and shall stand repealed
97 on October 2, 2018, unless reviewed and saved from repeal
98 through reenactment by the Legislature.

99 Section 2. The Legislature finds that it is a public
100 necessity that proprietary business information that is provided
101 to the Office of Insurance Regulation by an insurer or acquiring
102 party pursuant to the requirements of the Florida Insurance Code
103 or the Holding Company System Regulatory Act of the National
104 Association of Insurance Commissioners in order for the office
105 to conduct its regulatory duties with respect to insurer
106 solvency, be made confidential and exempt from s. 119.07(1),
107 Florida Statutes, and s. 24(a), Article I of the State
108 Constitution. The disclosure of such information could injure an
109 insurer in the marketplace by providing its competitors with
110 detailed insight into the financial status and strategic plans
111 of the insurer, thereby diminishing the advantage that the
112 insurer maintains over competitors that do not possess such
113 information. Without this exemption, an insurer or acquiring
114 party might refrain from providing accurate and unbiased data,
115 thus impairing the office's ability to accurately evaluate the
116 propriety of proposed acquisitions in the state, and the

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117 financial condition of insurers and their affiliates.
118 Proprietary business information derives actual or potential
119 independent economic value from not being generally known to,
120 and not being readily ascertainable by proper means by, other
121 persons who can derive economic value from its disclosure or
122 use. The office, in performing its duties and responsibilities,
123 may need to obtain proprietary business information from
124 insurers and regulated entities. Without an exemption from
125 public records requirements for proprietary business information
126 provided to the office, such information becomes a public record
127 when received and must be divulged upon request. Divulgence of
128 proprietary business information under the public records law
129 would destroy the value of that property to the proprietor,
130 causing a financial loss not only to the proprietor but also to
131 the residents of this state due to the loss of reliable
132 financial data necessary for the accurate evaluation of proposed
133 acquisitions. Release of proprietary business information would
134 give business competitors an unfair advantage and weaken the
135 position in the marketplace of the proprietor who owns or
136 controls the business information. The harm to insurers in the
137 marketplace and to the effective administration of acquisitions
138 caused by the public disclosure of such information far
139 outweighs the public benefits derived from its release.

140 Section 3. This act shall take effect October 1, 2013, if
141 SB 836 or similar legislation is adopted in the same legislative
142 session or an extension thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: April 2, 2013

I respectfully request that **Senate Bill 834**, relating to Public Records/Proprietary Business Information/Office of Insurance Regulation, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", with a stylized flourish at the end.

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1276

INTRODUCER: Governmental Oversight and Accountability Committee, Committee on Education and Senator Montford

SUBJECT: Public Meetings/University Direct-Support Organizations

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	Fav/CS
2.	Naf	McVaney	GO	Fav/CS
3.			EE	
4.			RC	
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:

CS/CS/SB 1276 exempts portions of meetings of university direct-support organizations (DSO) from public meeting laws when confidential information and documents are discussed.

Specifically, the bill exempts from public meetings requirements a portion of a meeting of a DSO board of directors, or the board’s executive committee or other committees of the board, at which information or documents related to donors, funding proposals, or research plans or programs are discussed.

The bill provides for repeal of the public meetings exemption pursuant to the Open Government Sunset Review Act on October 2, 2018, unless reviewed and saved from repeal by the Legislature. Additionally, the bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution.

Because this bill creates a public meeting exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The effective date of the bill is October 1, 2013.

This bill amends section 1004.28 of the Florida Statutes.

II. Present Situation:

Public records and meetings law

Article I, s. 24(a) of the Florida Constitution sets forth the state law regarding access to public records. 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.¹

Article I, s. 24(b) of the Florida Constitution sets forth the state law regarding access to public meetings. All meetings of any collegial public body of the executive branch of state government or of local governments, school districts, or special districts at which public business of such body is transacted or discussed must be open and noticed to the public. Meetings of the Legislature must also be open and noticed to the public.²

Current law also requires all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken are declared to be public meetings. Such meetings must be open to the public at all times and that no resolution, rule, or formal action is binding except as taken or made at an open meeting. The board or commission is responsible for providing reasonable notice of all such meetings.³

However, the Legislature has the authority to exempt records and meetings from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution. The Legislature may provide by general law passed by a two-thirds vote of each house for the exemption of records and meetings. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁴

Pursuant to the Open Government Sunset Review Act, in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption must be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption.⁵

University direct-support organizations

A university direct-support organization (DSO) is a Florida not-for-profit corporation which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university.⁶ A DSO may also be operated for the

¹ Art. I, s. 24(a), Fla. Const.

² Art. I, s. 24(b), Fla. Const.

³ Section 286.011(1), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ Section 119.15(2)-(3), F.S.

⁶ Section 1004.28(1)(a)1.-2., F.S.

benefit of a research and development park or research and development authority affiliated with a state university. A DSO must be certified by a state university board of trustees to operate in a manner consistent with the goals of the university and in the best interest of the state.⁷ DSOs serve a role in raising private support for university academic, research, and athletic activities.⁸

State universities are considered agencies of the state. As a result, state universities are subject to public records and public meetings laws.⁹ DSO boards are also subject to public records and public meetings laws.¹⁰

A DSO must provide for an annual financial audit of the organization's accounts and records which must be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General in accordance with current law¹¹ and by the university board of trustees.¹²

Current law provides a public records exemption for the identity of a donor who desires to remain anonymous and for all records of a DSO *except any*:¹³

- Audit report prepared by the independent auditor during the annual audit process under current law;¹⁴
- Management letter; or
- Supplemental data requested by the Board of Governors, the university's board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Therefore, all other records are confidential and exempt from public records requirements.

Current law does not provide a comparable public meetings exemption for a portion of a DSO meeting at which confidential and exempt information is discussed.

III. Effect of Proposed Changes:

CS/SB 1276 creates a public meetings exemption for a portion of a meeting of a DSO board of directors, or the board's executive committee or other committees of the board, at which any the following is discussed:

- Identity of a donor or a prospective donor;
- A proposal seeking research funding from the DSO; or

⁷ Section 1004.28(1)(a)2.-3., F.S.

⁸ Florida Board of Governors, *2013 Agency Bill Analysis for HB 359* (Feb. 14, 2013), at 1. HB 359

⁹ Chapters 119 and 286, Florida Statutes. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law).

¹⁰ Section 1004.28, F.S.; *see also Palm Beach Community College Foundation, INC., v. WFTV, INC.*, 611 So.2nd 588 (4th DCA 1993); Op. Att'y Gen. Fla. 05-27 (2005); Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

¹¹ Section 11.45(8), F.S.

¹² Section 1004.28(5), F.S.

¹³ Section 1004.28(5), F.S.

¹⁴ Section 1004.28(5), F.S.

- A plan or program for either initiating or supporting research.

The bill provides that the bill will repeal on October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature.

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

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. This bill creates a new public meetings exemption; therefore, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records or public meetings exemption to contain a public necessity statement justifying the exemption. This bill creates a new public meetings exemption; therefore, 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:

The public meetings exemption may encourage potential donors to DSOs who desire anonymity.

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/CS by Governmental Oversight and Accountability on April 9, 2013:

The CS/CS clarifies the public necessity statement by:

- Specifying that the Legislature finds that it is a public necessity to exempt certain university DSO meetings from public meetings requirements, not from disclosure; and
- Explaining that the public meetings exemption prevents disclosure of information that is protected by a current public records exemption.

CS by Committee on Education on March 18, 2013:

The CS differs from SB 1276 in that the committee substitute:

- Replaces the term “a” with “any” regarding portions of meetings to which the public meetings exemption will apply.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
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	.	

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

Senate Amendment

Delete lines 51 - 96
and insert:

Section 2. The Legislature finds that it is a public necessity that meetings of the board of directors of a direct-support organization established under s. 1004.28, Florida Statutes, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed should be held exempt from s.



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13 286.011, Florida Statutes, and s. 24(b), Art. I of the State
14 Constitution. For the benefit of our state universities, and
15 ultimately all the people of Florida, direct-support
16 organizations serve a vital role in raising donations from
17 private sources. This undertaking demands great sensitivity and
18 discretion, as donors frequently seek anonymity and are
19 concerned about the potential release of sensitive financial
20 information. If direct-support organizations cannot honor those
21 requests and protect such information from public disclosure,
22 potential donors may decline to contribute, thus hampering the
23 ability of the direct-support organization to carry out its
24 activities. The state has recognized these realities by making
25 most of the records of direct-support organizations confidential
26 and exempt from the state's public records requirements,
27 including the identity of donors and prospective donors.
28 However, without the exemption from public meeting requirements,
29 release of the identity of donors or prospective donors via a
30 public meeting would defeat the purpose of the public records
31 exemption. It is therefore the finding of the Legislature that
32 the exemption from public meeting requirements is a public
33 necessity. Additionally, the resources raised by direct-support
34 organizations are frequently used to initiate, develop, and fund
35 plans and programs for research that routinely contain sensitive
36 proprietary information, including university-connected research
37 projects, which provide valuable opportunities for faculty and
38 students and may lead to future commercial applications. This
39 activity requires the direct-support organization to develop
40 research strategies and evaluate proposals for research grants
41 that routinely contain sensitive or proprietary information,



573486

42 including specific research approaches and targets of
43 investigation, the disclosure of which could injure those
44 conducting the research. Maintaining the confidentiality of
45 research strategies, plans, and proposals is a hallmark of a
46 responsible funding process, is practiced by the National
47 Science Foundation and the National Institutes of Health, and
48 allows for candid exchanges among reviewers. The state has
49 recognized these realities by expressly making most of the
50 records of direct-support organizations confidential and exempt
51 from the state's public records requirements, including
52 proposals seeking research funding. Failure to close meetings in
53 which these activities are discussed would significantly
54 undermine the confidentiality of the strategies, plans, and
55 proposals themselves. Without the exemption from public meeting
56 requirements, the release during a public meeting of a proposal
57 seeking research funding from the direct-support organization or
58 a plan or program for either initiating or supporting research
59 would defeat the purpose of the public records exemption. It is
60 therefore the finding of the Legislature that the exemption from
61 public meeting requirements is a public necessity.

By the Committee on Education; and Senator Montford

581-02638-13

20131276c1

A bill to be entitled

An act relating to public meetings; amending s. 1004.28, F.S.; providing an exemption from public meeting requirements for certain portions of meetings of a university direct-support organization or of the executive committee or other committees of the board of directors of such organization; providing for legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (5) of section 1004.28, Florida Statutes, is amended to read:

1004.28 Direct-support organizations; use of property; board of directors; activities; audit; facilities.—

(5) ANNUAL AUDIT; PUBLIC RECORDS AND MEETINGS EXEMPTION.—

(a) Each direct-support organization shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and by the university board of trustees. The annual audit report shall be submitted, within 9 months after the end of the fiscal year, to the Auditor General and the Board of Governors for review. The Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability ~~shall~~ have the authority to require and receive from the organization or

Page 1 of 4

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

581-02638-13

20131276c1

from its independent auditor ~~any~~ records relative to the operation of the organization.

(b) The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report, management letter, and ~~any~~ supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(c) Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, a proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that any portion of a meeting of the board of directors of a university direct-support organization, or the executive committee or other committees of the board, at which the identity of a donor or prospective donor is discussed be exempt from disclosure. For the benefit of the state universities, and ultimately all citizens of this state, direct-support organizations serve a vital role in raising charitable

Page 2 of 4

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

581-02638-13 20131276c1
59 donations from private sources. This undertaking demands great
60 sensitivity and discretion, as donors and prospective donors
61 frequently seek anonymity and are concerned about the potential
62 release of sensitive financial information. If direct-support
63 organizations cannot protect the anonymity of donors or
64 prospective donors, prospective donors may decline to
65 contribute, thus hampering the ability of the direct-support
66 organization to fully accomplish its mission. The state
67 recognizes these realities by expressly making most of the
68 records of direct-support organizations confidential and exempt
69 from the state's public records laws, including the identity of
70 donors or prospective donors. Failure to close meetings at which
71 the identity of donors or prospective donors is discussed would
72 significantly compromise the confidentiality of such donors.

73 (2) The Legislature further finds that it is a public
74 necessity that any portion of a meeting of the board of
75 directors of a university direct-support organization, or the
76 executive committee or other committees of the board, at which a
77 proposal seeking research funding from the organization or a
78 plan or program for either initiating or supporting research is
79 discussed be exempt from disclosure. The resources raised by
80 direct-support organizations are frequently used to fund
81 university-connected research projects, which provide valuable
82 opportunities for faculty and students and may lead to future
83 commercial applications. This activity requires the direct-
84 support organization to evaluate proposals and examine plans or
85 programs for either initiating or supporting research which
86 contain highly proprietary information, including specific
87 research approaches and targets of investigation. Maintaining

581-02638-13 20131276c1
88 the confidentiality of research plans and proposals is a
89 hallmark of research funding, is practiced by the National
90 Science Foundation and the National Institutes of Health, and
91 allows for candid exchanges between reviewers critiquing plans
92 and proposals. This exemption is necessary because the failure
93 to close access to portions of meetings in which these
94 activities are discussed would significantly undermine the
95 confidentiality of the research plans and proposals and may
96 injure the affected researcher.

97 Section 3. This act shall take effect October 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic public meetings / univ. DSO's

Bill Number 1276
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title _____

Address P O Box 10909

Phone 850 205 9000

Street

Tallahassee FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Harbor Branch Oceanographic Institute Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

School Food and Nutrition Service Programs

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.¹³ The Secretary of the United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.¹⁴ Federal law prohibits disclosure of any information obtained from an application for free or reduced price meals except under specified circumstances.¹⁵

The state Department of Agriculture and Consumer Services (DACS) is the state administrator of school food and nutrition service programs.¹⁶ The state Department of Children and Families (DCF) receives information from the United States Social Security Administration and determines Medicaid eligibility for the state of Florida. The state Department of Education (DOE) obtains eligibility information from the DCF and provides it to the DACS and local educational agencies for a determination of whether a student is eligible for participation in a school food and nutrition service program.¹⁷

Personal Information of Program Applicants or Participants

Personal information of applicants for or participants in a school food and nutrition service program appears to be confidential and exempt from public disclosure when held by an educational agency in a K-12 education record.¹⁸ In addition, a public records exemption for personal identifying information of a temporary cash assistance program participant or family member,¹⁹ state confidentiality sharing provisions,²⁰ and federal confidentiality regulations²¹ may provide some level of protection. However, there is currently no clearly defined public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program that is held by the DACS, the DCF, or the DOE.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ See the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

¹⁴ 42 U.S.C. 1758(b)(1)(A) and 42 U.S.C. 1773(e)(1)(A).

¹⁵ 42 U.S.C. 1758(b)(6).

¹⁶ Section 570.98(1), F.S.

¹⁷ *Memorandum of Understanding between the DCF, DOC, and DACS*, DACS contract no. 018596 (on file with the Senate Governmental Oversight and Accountability Committee) and phone call with DACS staff on April 5, 2013.

¹⁸ See s. 1002.221, F.S.

¹⁹ Section 414.295, F.S. The exemption does not apply to such information when held by the DACS.

²⁰ See ss. 39.00145(4), 381.0022, and 402.115, F.S.

²¹ See 42 U.S.C. 602(a) and 45 C.F.R. 205.50(a) (use or disclosure of Temporary Cash Assistance information), 7 U.S.C. 2020(e)(g) and 7 C.F.R. 272.1(c)(d) (use or disclosure of Food Assistance information), and 42 U.S.C. 1396(a)(7) and 42 C.F.R. 431.302-.306 (use or disclosure of Medicaid information).

III. Effect of Proposed Changes:

This bill creates a public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition program that is held by the DACS, the DCF, or the DOE.

The bill requires the exempt information to be disclosed to:

- Another governmental entity in the performance of its official duties and responsibilities; or
- Any person who has the written consent of the applicant or participant.

The bill provides that it does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill will take effect on the same date that SB 1628 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), art. I of the Florida 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 Florida 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:

The 2011 Legislature created the Healthy Schools for Healthy Lives Act, which provided for a transfer of administration of school food and nutrition service programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).²² This bill is linked to SB 1628, which, in pertinent part, rearranges and supplements existing law to allow the DACS to more effectively administer its school food and nutrition service program duties.

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 Governmental Oversight and Accountability on April 9, 2013:

The original bill provided that its effective date is contingent upon enactment of a linked substantive bill, but did not specify a bill number. The CS adds “SB 1628” to this bill’s effective date as the linked substantive bill.

B. Amendments:

None.

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

²² Chapter 2011-217, L.O.F. (codified at ss. 570.98-570.984, F.S.).



488934

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 81
and insert:
SB 1628 or similar legislation takes effect, if such

By Senator Montford

3-01759-13

20131756__

A bill to be entitled

An act relating to public records; creating s. 595.409, F.S.; providing an exemption from public records requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education; providing for specified disclosure; providing for applicability; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a contingent effective date.

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

Section 1. Section 595.409, Florida Statutes, is created to read:

595.409 Public records exemption.—

(1) Personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, held by the department, the Department of Children and Families, or the Department of Education is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) Such information shall be disclosed to:

1. Another governmental entity in the performance of its official duties and responsibilities; or

2. Any person who has the written consent of the applicant

3-01759-13

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for or participant in such program.

(b) This section does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

(3) This exemption applies to any information identifying a program applicant or participant held by the department, the Department of Children and Families, or the Department of Education before, on, or after the effective date of this exemption.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education be made exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order for a person applying to or participating in a school food and nutrition service program to feel secure in the program, the applicant or participant should be able to rely upon the fact that his or her personal identifying information held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education is protected from disclosure to anyone other than those who have

3-01759-13

20131756__

59 the need to know such information. A public records exemption
60 for personal identifying information of an applicant for or
61 participant in a school food and nutrition service program, as
62 defined in s. 595.402, Florida Statutes, held by the Department
63 of Agriculture and Consumer Services, the Department of Children
64 and Families, or the Department of Education protects
65 information of a sensitive, personal nature concerning an
66 individual, the release of which could be defamatory to the
67 individual, could cause unwarranted damage to his or her good
68 name or reputation, and could possibly jeopardize the safety of
69 the individual. Additionally, the public records exemption
70 allows the state to effectively and efficiently administer a
71 governmental program, which administration would be
72 significantly impaired without the exemption. Thus, the
73 Legislature declares that it is a public necessity that the
74 personal identifying information of an applicant for or a
75 participant in a school food and nutrition service program, as
76 defined in s. 595.402, Florida Statutes, held by the Department
77 of Agriculture and Consumer Services, the Department of Children
78 and Families, or the Department of Education be made exempt from
79 public records requirements.

80 Section 3. This act shall take effect on the same date that
81 SB _____ or similar legislation takes effect, if such
82 legislation is adopted in the same legislative session or an
83 extension thereof and becomes law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Public Records - School Food + Nutrition

Bill Number SB 1756
(if applicable)

Name Justin Hellis

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE AFFAIRS / DEPT OF AGRICULTURE

Address PL-10 CAPITOL
Street

Phone 850-617-7722

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing DEPT OF AGRICULTURE ; CONSUMER SERVICES.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 242

INTRODUCER: Governmental Oversight and Accountability Committee, Banking and Insurance Committee and Senator Hukill

SUBJECT: Interstate Insurance Product Regulation Compact

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
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:

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact (Compact). The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

Upon joining the Compact, Florida will become a member of the Interstate Insurance Product Regulation Commission (Commission). The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products; and
- Approve product filings that satisfy applicable uniform standards.

The bill has an effective date of October 1, 2013.

This bill creates undesignated sections of the Florida Statutes.

II. Present Situation:

The Interstate Insurance Product Regulation Compact

The Interstate Insurance Product Regulation Compact (Compact) is an agreement among the compacting states to uniform standards for the regulation of four insurance product lines:

- Life insurance,
- Annuities,
- Disability income, and
- Long-term care insurance.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (Commission).¹ Each compacting state is represented by one member, who is that state's representative to the Commission. All Compact members² receive one vote under the Compact. The adoption of a uniform standard requires a two-thirds vote of Commission members. Bylaws require a majority vote of members. The Commission is governed by a 14-member management committee. The Management Committee members currently include the seven largest Compacting States according to premium volume,³ four mid-sized states with at least 2 percent of the national premium volume⁴ and one additional state from each of four regional zones⁵

The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

If Florida joins the Compact, any product whose product line is governed by the Compact and is submitted to the Commission, if approved, will be approved to be offered for sale in Florida⁶ if it complies with the requirements of the Compact. The model laws and regulations of the Compact will govern and generally preempt the application of conflicting Florida law governing the

¹ The Commission is a multi-state joint public entity that came into existence in March 2004 upon the legislative enactment of two states, Colorado and Utah, respectively. The Commission did not become operational for purposes of adopting uniform product standards until it May 2006, when it met the requirement set by the terms of the Compact. The Commission has 41 Member States representing approximately two-thirds of the premium volume nationwide.

² The other Compact members are Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Utah, Vermont, West Virginia and Wyoming

³ Illinois, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Texas.

⁴ Maryland, Missouri, Virginia, and Wisconsin

⁵ Kansas, Mississippi, New Hampshire and Washington

⁶ If the insurer is authorized to transact business in Florida.

product.⁷ A state may opt out of a uniform standard via legislation or rule either at the time the state enacts the Compact or prior to the enactment of a new standard or rule approved by the Commission. Florida will opt out of Commission standards for long-term care insurance and join the Compact for life insurance, annuities, and disability income insurance under CS/CS/SB 242.

The Florida Legislature has in the past enacted laws containing greater consumer protections than are generally available in other states. For instance, in Florida, the suitability of an annuity—the appropriateness of a particular annuity product relative to the consumer’s age, investment objectives, and current and future financial needs—has been a primary concern with regard to transactions involving consumers, particularly senior consumers. In 2004, the Florida Legislature enacted a model law on annuities, the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (NAIC) in s. 627.4554, F.S.⁸ The 2008 Legislature, however, subsequently passed the John and Patricia Seibel Act, which strengthened Florida’s annuity standards and procedures.⁹ Those standards were further strengthened by the 2010 Legislature.¹⁰

To date, the Commission has adopted uniform standards for the following individual product lines: term and whole life insurance, variable and non-variable adjustable life insurance, variable and non-variable annuities, long-term care insurance, and disability income insurance. The Commission has also promulgated standards relating to the applications for the various individual lines of insurance, the benefit features of individual life policies, the benefit features of individual annuities, and for changes to mortality tables used for individual life insurance. Standards for group term life insurance have also been adopted. The Commission is in the process of developing uniform standards for group annuities and standards for specific benefits offered in group term life insurance policies.

Life Insurance

Life insurance is insurance of human lives.¹¹ Life insurance provides survivor benefits for designated beneficiaries upon the death of the insured. The three most common types of life insurance are whole life, term life, and universal life. Whole life insurance provides a fixed amount of life insurance coverage while building cash value. The premium remains the same until the maturity date (usually age 100). Benefits are payable upon the death of the insured or on the maturity date. The cash value of the policy increases as premiums are paid and allow loans to be made on the policy for up to the amount of the cash value. Term life insurance is purchased for a specific time period and pays a death benefit only if the insured dies during the specified time period. Term insurance does not build cash value. Term life insurance policies may contain provisions allowing the insured to renew the policy after expiration of the term or convert the

⁷ All lawful actions of the Commission, including all uniform standards, rules, and operating procedures, are binding on compacting states. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General.

⁸ Section 146, ch. 2004-390, L.O.F.

⁹ Section 9, ch. 2008-237, L.O.F.

¹⁰ Section 52, ch. 2010-175, L.O.F.

¹¹ Section 624.602, F.S.

policy to a whole life policy. Universal life insurance is a combination of a term life policy and the ability to accumulate cash value.

Annuities

An annuity is a form of life insurance transaction involving a contract between a customer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities can be obtained in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years.

Disability Income Insurance

Disability income insurance pays a weekly or monthly income for a specific period if the insured suffers a disability and cannot continue working or obtain work. The disability may involve sickness, injury, or a combination of the two. Disability policies often contain an elimination period, which is a specified time period after the date of disability that must pass before the insured may receive benefits. Most disability insurance plans coordinate benefits with Social Security benefits and workers' compensation to eliminate duplication of coverage.

Long-Term Care Insurance

Long-term care insurance policies provide benefits for a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time for services not covered by a regular health insurance, Medicare or Medicare supplement insurance policy. The need for long-term care insurance may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

Florida law establishes requirements for long-term care policies in the Long-Term Care Insurance Act.¹² The act specifies filing requirements, disclosure, advertising, and performance standards for such policies, minimum standards for home health care benefits, mandatory offers, cancellation requirements, and standards for benefit triggers for receiving benefits under the policy. The act also provides consumers grace periods for late payment and notice of cancellation.¹³

¹² Part XVIII of chapter 627, F.S.

¹³ Section 627.94073, F.S.

III. Effect of Proposed Changes:

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact. The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

Legislative Findings and Declaration of Intent

Section 1 creates an undesignated section of statute stating that Florida intends to join the Interstate Insurance Product Regulation Compact (Compact) and become a member of the Interstate Insurance Product Regulation Commission (Commission). The Legislature finds that the Compact will, through a single source for filing new products and a uniform set of product standards that provide a high level of consumer protection, address the increased mobility of the populace and significant changes in the financial services marketplace that have resulted in asset-based insurance products competing directly with other retirement and estate planning instruments sold by banks and securities firms. The Legislature also declares that it is adopting the compact under the understanding that no uniform standards long-term care insurance rate increase filings will be developed.

Enactment of the Compact and Membership in the Commission

Section 2 makes the state a compacting state under the Compact and a member of the Commission, whose purposes are to protect consumer interests, develop uniform standards for insurance products, establish a clearinghouse to promptly review insurance products and related advertisements, give regulatory approval to product filings and advertisements that satisfy the applicable uniform standard, coordinate regulatory resources among states, create the Commission, and perform these and other related functions.

Commission Membership, Voting, and Bylaws

Each compacting state has one member of the Commission, who is entitled to one vote. The Commission is governed by a management committee of up to 14 members consisting of:

- One member each from the four compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products.
- One member from the four compacting states with at least 2 percent of the market described above selected on a rotating basis, other than from the six states with the largest premium volume.
- One member from four compacting states with less than 2 percent of the market described above, with one selecting from each of the four zone regions of the NAIC.

The Commission annually elects officers from the management committee and is authorized to select an executive director who serves as secretary to the Commission but may not be a Commission member.

The Compact requires the establishment of legislative and advisory committees. The legislative committee consists of state legislators and monitors and makes recommendations to the Commission. The management committee must consult with the legislative committee prior to adopting any uniform standard, change in Commission bylaws, annual budget or other significant matter. Two advisory committees must be established, one comprising independent consumer representatives and another composed of insurance industry representatives. Additional advisory committees may be established. Adoption of bylaws requires a majority vote of members.

Amendments to the Compact

Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. An amendment is adopted only if unanimously enacted into law by all of the compacting states.

Powers of the Commission

The bill establishes the Interstate Insurance Product Regulation Commission. The Commission may:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

Uniform Standards

The Commission has authority to adopt uniform standards by rule. A “uniform standard” is a commission standard for a product line, plus subsequent amendments that use a substantially consistent methodology. A uniform standard includes all product requirements in the aggregate. A uniform standard must be construed to prohibit the use of inconsistent, misleading, or ambiguous provisions in a product. The uniform standard must also ensure that the form of any product made available to the public is not unfair, inequitable, or against public policy as determined by the Commission. Adoption of a uniform standard requires a two-thirds vote of Commission members.

For purposes of this act, Florida is adopting all uniform standards that the Commission has adopted as of March 1, 2013, other than for long-term care insurance. The bill states that the Office of Insurance Regulation (OIR) shall opt out of any new uniform standard or amendment to a standard that substantially changes it that is adopted by the Commission after March 1, 2013. The bill directs the OIR to opt out of the uniform standard and authorizes the state Financial Services Commission to adopt rules to opt out of any new uniform standards or substantial amendments until such standards or amendments are approved by the Legislature.

Commission Receipt, Review, and Approval of Products

The Commission also has authority to receive and review products filed with the Commission and rate filings for disability income and long-term care insurance products (Florida is opting out of all uniform standards involving long-term care). Products and disability income insurance rates that satisfy the appropriate uniform standard may be approved. Commission approval has the force and effect of law and is binding on compacting states.

A product is the policy form or contract and includes any application, endorsement, or related form that is attached to and part of the policy or contract. The term also includes any evidence of coverage or certificate for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

The Commission may designate certain products and advertisements that may self-certify compliance with uniform standards and commission rules and are not required to obtain prior approval from the Commission. The Commission may issue subpoenas requiring the testimony of witnesses and production of evidence and may also bring and prosecute legal proceedings if the standing of any state insurance department to sue or be sued is not affected. The Commission has the power to adopt rules that have the force and effect of law and are binding in the compacting states. Such rules include uniform standards for product and related advertisements that are filed with the Commission.

To obtain approval of a product, the insurer must file the Product with the Commission and pay applicable fees. Any product approved by the Commission may be sold or otherwise issued in any compacting state in which the insurer is authorized to do business. An insurer may alternatively file its product with a state insurance department, and such filing will be subject to the laws of that state.

Review of Commission Decisions Regarding Filings

A disapproved product or advertisement may be appealed to a review panel appointed by the Commission within 30 days of the Commission's determination. An allegation that the Commission disapproved a product or advertisement arbitrarily, capriciously, abused its discretion, or otherwise acted not accordance with law is subject to judicial review. Judicial proceedings must be brought in a court where the principal office of the Commission is located (Washington, DC).

Rulemaking by the Commission and State Opt-Out Procedure

The rulemaking process must conform to the Model State Administrative Procedure Act of 1981, as amended. Prior to adopting a uniform standard, the Commission must give written notice to the relevant state legislative committees in each compacting state. In adopting a uniform standard, the Commission must consider all submitted materials and issue a concise explanation of its decision. Uniform standards are effective 90 days after their adoption by the Commission. Judicial review of Commission rules (including uniform standards) or operating procedures is available but limited by the Compact. Any person may petition for judicial review, but the

petition does not stay or prevent the rule or operating procedure from becoming effective unless the court finds the petitioner has a substantial likelihood of success. The court may not find a Commission rule or operating procedure unlawful if it represents a reasonable exercise of the Commission's authority

A state may opt out of a uniform standard via legislation or rule. Florida is prospectively opting out of all uniform standards involving long-term care insurance products, as allowed by the terms of the Compact. Opting out of a uniform standard via rule requires the state to give the Commission written notice within 10 business days after the uniform standard is adopted and find that the uniform standard does not provide reasonable protections to the consumers of that state. The OIR Commissioner must make specific findings of fact and conclusions of law detailing the facts that warrant departure of the uniform standards and that those facts outweigh the Legislature's intent to join the compact and a presumption that the uniform standard provides reasonable consumer protections.

Compliance Enforcement

The Commission monitors compacting states for compliance with Commission bylaws, rules, uniform standards, and operation procedures, and provides written notice to a state that is in noncompliance.

The state insurance commissioner retains authority to oversee the market regulation of the activities of insurers in that state. An insurance product or advertisement that has been approved or certified by the Commission, however, does not violate the provisions, standards, or requirements of the Compact unless the Commission holds a hearing and issues a final order finding a violation. If an advertisement has not been approved or certified to the Commission, the state insurance commissioner may only bring an action for violating a standard of the Compact if the Commission first authorizes the action.

Withdrawing From or Dissolving the Compact; State Default, Suspension and Termination

A state may withdraw from the Compact by repealing the law that enacted the Compact. Withdrawal from the Compact does not affect product filings approved or self certified, or approved advertisements, except by mutual agreement of the Commission and the withdrawing state, unless the state formally rescinds approval in the same manner as provided by the laws of that state for disapproving products or advertisements previously approved under state law. The compact is dissolved once there is only one compact member.

The Commission may suspend a state that is determined to have defaulted in the performance of its obligations or duties under the Compact or the bylaws, rules, or operating procedures of the Compact. The Commission must notify a defaulting state in writing and provide a time period within which the state may cure the default. The state will be terminated from the Compact if the default is not timely cured. Products and advertisements approved by the Commission, or self-certified, remain in force in the same manner as though the state had withdrawn voluntarily. Reinstatement following termination requires reenacting the Compact.

Actions of Commission are Binding on States; Conflict of Laws; Advisory Opinions

All lawful actions of the Commission, including all rules and operating procedures, are binding on compacting states. Agreements between the Commission and compacting states are binding in accordance with their terms. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General. A Compact provision is ineffective as to a state, however, if it exceeds the constitutional limits imposed on the Legislature of a state. If an insurance product is filed with an individual state, it is subject to the law of that state.

If requested by a party to a conflict over the meaning or interpretation of Commission actions and approved by a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

Inspection of Commission Records

The Commission must adopt rules creating conditions and procedures for the public inspection and copying of information and official records, except for records involving the privacy of individuals and insurers' trade secrets. The Commission may also adopt additional rules allowing it make available otherwise exempt records and information to federal and state agencies, including law enforcement. All public requests to inspect or copy records, data, or information of the Commission that is in the possession of the OIR, insurance commissioner, or commissioner's designee, are subject to Chapter 119, Florida Statutes.

Commission Funding and Expenses

The Commission covers the cost of its operations and activities through the collection of filing fees. The annual budget may not be approved until it has been subject to the required notice and comment period. The Commission is exempt from all taxation by compacting states. The Commission may not pledge the credit of any compacting state except with the legal authorization of the compacting state. Complete and accurate accounts of Commission financial records must be kept and shall be audited annually by an independent certified public accountant. At least every 3 years, the audit must include a management and performance audit of the Commission.

Severability Clause

The Compact provisions are severable from provisions that are deemed unenforceable.

Adoption of All Commission Uniform Standards; State Opt-Out of All Future Uniform Standards and All Long-Term Care Insurance Product Standards

Section 3. All uniform standards of the Commission as of March 1, 2013, other than for long-term care insurance, are adopted as the law of this state. The state also prospectively opts out of all uniform standards involving long-term care insurance products.

The Office of Insurance Regulation (OIR) must, however, opt out of all new uniform standards that the Commission adopts after March 1, 2013, that substantially alter or add to existing Commission uniform standards that the state adopted pursuant to this bill until the state enacts legislation to adopt or opt out of the new uniform standards or amendments to uniform standards. The OIR must immediately notify the legislature of any new uniform standard or amendment to an existing standard.

The bill grants rulemaking authority to the Financial Services Commission to implement the compact. The rulemaking authority must be used to opt out of any new uniform standards or amendments of the commission until such standards are legislatively approved.

Unemployment and Reemployment Taxes

Section 4 imposes state unemployment and reemployment taxes under ch. 443, F.S., on any Commission employees who perform services within this state. The Commission is also subject to state taxation for any business or activity conducted or performed in the state.

Public Requests for Inspection and Copying of Information, Data, or Records

Section 5. Specifies that notwithstanding the provisions of the Compact governing public inspection and copying of records (Article VIII, sections 1 and 2); product filing information (Article X, section 2); and documents and information related to Commission finances or internal audits (Article XII, section 6), a request by a Florida resident for public inspection and copying of information, data, or official records that include:

- Insurer trade secrets will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 624.4213, F.S.
- Matters of privacy of individuals will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 119.071, F.S.

The section also specifies that nothing in the act abrogates a person's right to access information consistent with the Constitution and laws of Florida.

Rulemaking

Section 6. Grants rulemaking authority to the Financial Services Commission to implement the act, which may use that authority to opt out of new uniform standards adopted after October 1, 2013, until such standards are approved by the Legislature.

Effective Date

Section 7. The effective date of the act is October 1, 2013.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:**Non-Delegation Doctrine**

Statutory authorization to compact or enter reciprocal agreements with other states potentially implicates the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires application of a “strict separation of powers doctrine...which encompasses two fundamental prohibitions’.”¹⁴ No branch of Government may delegate its constitutionally assigned powers to another branch.¹⁵

The Legislature may constitutionally transfer subordinate functions to “permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions.”¹⁶ However, the Legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”¹⁷ Further, the nondelegation doctrine precludes the legislature from delegating its powers “absent ascertainable minimal standards and guidelines.”¹⁸ When the Legislature delegates power to another body, it “must clearly announce adequate standards to guide in the execution of the powers delegated.”¹⁹

The CS/CS attempts to comply with the nondelegation doctrine by expressing that it is state policy to prospectively opt-out of all uniform standards and new substantial amendments to such standards that are adopted by the Commission after March 1, 2013. The bill directs the Office of Insurance Regulation to opt out all such uniform standards and new substantial amendments. The Financial Services Commission must use its

¹⁴ *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 763, 769 (Fla. 2005) (quoting *State v. Cotton*, 769 So.2d 345, 353 (Fla. 2000), and *Chiles*, 589 So.2d at 264).

¹⁵ *Chiles*, 589 So.2d at 264.

¹⁶ *Microtel v. Fla. Pub. Serv. Comm’n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep’t of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)).

¹⁷ *Sims v. State*, 754 So.2d 657, 668 (Fla. 2000).

¹⁸ *Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

¹⁹ *Martin*, 916 So.2d at 770.

rulemaking authority under the bill to opt out of uniform standards and substantial amendments until they are approved by the Legislature.

Inspection and Copying of Public Records

Section VIII of the Compact requires the Commission to adopt rules establishing conditions and procedures for the inspection of its information and official records. This implicates Florida's constitutional and statutory laws which provide a broad grant of authority to the public to inspect or copy any public record.

Article I, s. 24 of the State Constitution, provides that “[e]very 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, which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states that, “[e]very 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 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.”

Only the Legislature is authorized to create exemptions to open government requirements. 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. A bill enacting an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Compact specifies that the Commission rules must allow for the public inspection and copying of its information and official records, except information and records involving the privacy of individuals and trade secrets. Under the CS/CS, a request for public inspection and copying information involving individual privacy will be referred to the state insurance commissioner who will handle it in accordance with s. 119.071, F.S. Similarly, a request for public inspection and copying of potential insurer trade secret information will be referred to the state insurance commissioner who will handle it in accordance with s. 624.4213, F.S.

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

Representatives from the Florida Department of Revenue state that, “[e]ven though Article XII of the Compact exempts the Commission from all taxation, if the Commission employs persons who work in Florida, it will be subject to the labor laws of Florida in ch. 443, F.S. Federal law (26 U.S.C. 3309) requires states to make nonprofit entities and governmental entities liable for reemployment tax. Certain employers are allowed to elect to reimburse Florida for reemployment benefits (not a tax) paid to any of its employees instead of paying the Florida reemployment tax. The Commission, as a non-profit entity, would be permitted to elect to be a reimbursing employer in Florida. If the Commission does not make such election for any Florida employees, the Commission would be required to pay the reemployment tax.”

The CS/CS specifies that the Commission is subject to state unemployment or reemployment taxes imposed pursuant to ch. 443, F.S., in compliance with the Federal Unemployment Tax Act, for any persons employed by the Commission who perform services for it within the state. The bill also specifies that the Commission is subject to taxation for any commission business or activity conducted or performed in Florida.

B. Private Sector Impact:

Representatives from the Office of Insurance Regulation indicate that the state’s membership in the Compact could potentially reduce the cost of filing and obtaining approval of asset-based insurance products.

C. Government Sector Impact:

If Florida becomes a member of the Compact, the Office of Insurance Regulation may experience a reduction in its workload for those functions now performed by the Commission. That reduction in workload could result in decreased appropriation needs for the Office. Representatives from the OIR indicate that the office will not incur a fiscal impact if Florida adopts the Compact.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Other Comments: Department of Financial Services**

The Department of Financial Services states that certain compact provisions relating to annuity investments by seniors, such as s. 2, Art. 8 of the compact, provide less protection than do the provisions currently found in s. 627.4554, F.S. For example, the DFS states that the compact

provisions do not limit surrender/withdrawal charges to 10% or charge period duration to 10 years for purchasers age 65 or older, as is currently required by state law.²⁰

It is unclear whether such compact provisions comply with state law. If not, such compact provisions, to the extent they are in conflict with state law, would supersede the relevant state provisions. Adoption of the compact provisions relating to annuity investments by seniors appears to be required for participation in the compact.

Other Comments: Drafting

Lines 113-116 of the bill require public records requests that include matters of privacy of individuals to be handled in accordance with s. 119.071, F.S., which provides general agency public records exemptions. It is suggested that the reference be amended to instead refer to s. 119.07(1), F.S., which governs compliance with a public records request. Although s. 119.071, F.S., includes general public records exemptions relating to certain agency personnel, specifying that provision could be interpreted to exclude other, more specific applicable public records exemptions.

VIII. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on April 9, 2013:

The CS/CS amends a requirement that certain public records requests be handled in accordance with s. 119.071, F.S., to instead require such requests to be handled in accordance with s. 119.07(1), F.S.

CS by Banking and Insurance on April 2, 2013:

The CS adds the following provisions to the bill:

- Standards clarifying the extent of immunity from liability granted to the Commission executive director, members, officers, employees, and representatives.
- Specifies that the OIR must opt-out of all uniform standards and amendments to such standards adopted by the Commission after March 1, 2013, and that the Financial Services Commission must adopt rules making the opt-out effective until the Legislature approves the new uniform standard or amendment.
- Specifies that the Compact may not violate provisions of the state Constitution and law relating to public inspection and copying of documents and information and requires the insurance commissioner to handle such requests related to matters of privacy of individuals and insurer trade secrets.
- Specifies that the Commission is subject to state unemployment taxes, state reemployment taxes, and taxation for business or activity conducted or performed in Florida.

²⁰ *SB 242 Bill Analysis*, Department of Financial Services, March 21, 2013 (on file with the Governmental Oversight and Accountability Committee).

B. Amendments:

None.

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



413798

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
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	.	
	.	

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

Senate Amendment

Delete line 1116
and insert:
s. 119.07(1), Florida Statutes.

1
2
3
4
5
6

By the Committee on Banking and Insurance; and Senator Hukill

597-03466-13

2013242c1

1 A bill to be entitled
 2 An act relating to the Interstate Insurance Product
 3 Regulation Compact; providing legislative findings and
 4 intent; providing purposes; providing definitions;
 5 providing for the establishment of an Interstate
 6 Insurance Product Regulation Commission; providing
 7 responsibilities of the commission; specifying the
 8 commission as an instrumentality of the compacting
 9 states; providing for venue; specifying the commission
 10 as a separate, not-for-profit entity; providing powers
 11 of the commission; providing for organization of the
 12 commission; providing for membership, voting, and
 13 bylaws; designating the Commissioner of Insurance
 14 Regulation as the representative of the state on the
 15 commission; allowing the Commissioner of Insurance to
 16 designate a person to represent the state on the
 17 commission, as is necessary, to fulfill the duties of
 18 being a member of the commission; providing for a
 19 management committee, officers, and personnel of the
 20 commission; providing authority of the management
 21 committee; providing for legislative and advisory
 22 committees; providing for qualified immunity, defense,
 23 and indemnification of members, officers, employees,
 24 and representatives of the commission; providing for
 25 meetings and acts of the commission; providing rules
 26 and operating procedures; providing rulemaking
 27 functions of the commission; providing for opting out
 28 of uniform standards; providing procedures and
 29 requirements; providing for commission records and

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30 enforcement; authorizing the commission to adopt
 31 rules; providing for disclosure of certain
 32 information; specifying that certain records, data, or
 33 information of the commission, wherever received, by
 34 and in possession of the Office of Insurance
 35 Regulation is subject to ch. 119, F.S.; requiring the
 36 commission to monitor for compliance; providing for
 37 dispute resolution; providing for product filing and
 38 approval; requiring the commission to establish filing
 39 and review processes and procedures; providing for
 40 review of commission decisions regarding filings;
 41 providing for finance of commission activities;
 42 providing for payment of expenses; authorizing the
 43 commission to collect filing fees for certain
 44 purposes; providing for approval of a commission
 45 budget; exempting the commission from all taxation,
 46 except as otherwise provided; prohibiting the
 47 commission from pledging the credit of any compacting
 48 states without authority; requiring the commission to
 49 keep complete accurate accounts, provide for audits,
 50 and make annual reports to the Governors and
 51 Legislatures of compacting states; providing for
 52 amendment of the compact; providing for withdrawal
 53 from the compact, default by compacting states, and
 54 dissolution of the compact; providing severability and
 55 construction; providing for binding effect of this
 56 compact and other laws; prospectively opting out of
 57 all uniform standards adopted by the commission
 58 involving long-term care insurance products; adopting

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59 all other existing uniform standards that have been
 60 adopted by the commission; providing a procedure for
 61 adoption of any new uniform standards or amendments to
 62 existing uniform standards of the commission;
 63 requiring the office to notify the Legislature of any
 64 new uniform standards or amendments to existing
 65 uniform standards of the commission; providing that
 66 any new uniform standards or amendments to existing
 67 uniform standards of the commission may only be
 68 adopted via legislation; authorizing the Financial
 69 Services Commission to adopt rules to implement this
 70 act and opt out of certain uniform standards;
 71 providing an effective date.

72
 73 Be It Enacted by the Legislature of the State of Florida:

74
 75 Section 1. Legislative findings; intent.—

76 (1) The Legislature finds that the financial services
 77 marketplace has changed significantly in recent years and that
 78 asset-based insurance products, which include life insurance,
 79 annuities, disability income insurance, and long-term care
 80 insurance, now compete directly with other retirement and estate
 81 planning instruments that are sold by banks and securities
 82 firms.

83 (2) The Legislature further finds that the increased
 84 mobility of the population and the risks borne by these asset-
 85 based products are not local in nature.

86 (3) The Legislature further finds that the Interstate
 87 Insurance Product Regulation Compact Model adopted by the

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88 National Association of Insurance Commissioners and endorsed by
 89 the National Conference of Insurance Legislators and the
 90 National Conference of State Legislatures is designed to address
 91 these market changes by providing a uniform set of product
 92 standards and a single source for filing of new products.

93 (4) The Legislature further finds that the product
 94 standards that have been developed provide a high level of
 95 consumer protection. Further, it is noted that the Interstate
 96 Insurance Product Regulation Compact Model includes a mechanism
 97 for opting out of any product standard that the state determines
 98 would not reasonably protect its citizens. With respect to long-
 99 term care insurance, the Legislature understands that the
 100 compact does not intend to develop a uniform standard for rate
 101 increase filings, thereby leaving the authority over long-term
 102 care rate increases with the state. The state relies on that
 103 understanding in adopting this legislation. The state, pursuant
 104 to the terms and conditions of this act, seeks to join with
 105 other states and establish the Interstate Insurance Product
 106 Regulation Compact, and thus become a member of the Interstate
 107 Insurance Product Regulation Commission. The Commissioner of
 108 Insurance Regulation is hereby designated to serve as the
 109 representative of this state on the commission. The commissioner
 110 may designate a person to represent this state on the
 111 commission, as is necessary, in order to fulfill the duties of
 112 being a member of the commission.

113 Section 2. Interstate Insurance Product Regulation
 114 Compact.—The Interstate Insurance Product Regulation Compact is
 115 hereby enacted into law and entered into by this state with all
 116 states legally joining therein in the form substantially as

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117 follows:

118 Interstate Insurance Product Regulation Compact

121 Preamble

122
 123 This compact is intended to help states join together to
 124 establish an interstate compact to regulate designated insurance
 125 products. Pursuant to the terms and conditions of this compact,
 126 this state seeks to join with other states and establish the
 127 Interstate Insurance Product Regulation Compact and thus become
 128 a member of the Interstate Insurance Product Regulation
 129 Commission.

132 Article I

133 PURPOSES.—The purposes of this compact are, through means
 134 of joint and cooperative action among the compacting states, to:

135 (1) Promote and protect the interest of consumers of
 136 individual and group annuity, life insurance, disability income,
 137 and long-term care insurance products.

138 (2) Develop uniform standards for insurance products
 139 covered under the compact.

140 (3) Establish a central clearinghouse to receive and
 141 provide prompt review of insurance products covered under the
 142 compact and, in certain cases, advertisements related thereto,
 143 submitted by insurers authorized to do business in one or more
 144 compacting states.

145 (4) Give appropriate regulatory approval to those product

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146 filings and advertisements satisfying the applicable uniform
 147 standard.

148 (5) Improve coordination of regulatory resources and
 149 expertise between state insurance departments regarding the
 150 setting of uniform standards and review of insurance products
 151 covered under the compact.

152 (6) Create the Interstate Insurance Product Regulation
 153 Commission.

154 (7) Perform these and such other related functions as may
 155 be consistent with the state regulation of the business of
 156 insurance.

157 Article II

158
 159 DEFINITIONS.—For purposes of this compact, the term:

160 (1) "Advertisement" means any material designed to create
 161 public interest in a product, or induce the public to purchase,
 162 increase, modify, reinstate, borrow on, surrender, replace, or
 163 retain a policy, as more specifically defined in the rules and
 164 operating procedures of the commission adopted as of March 1,
 165 2013, and subsequent amendments thereto if the methodology
 166 remains substantially consistent.

167 (2) "Bylaws" means those bylaws adopted by the commission
 168 as of March 1, 2013, for its governance or for directing or
 169 controlling the commission's actions or conduct.

170 (3) "Compacting state" means any state which has enacted
 171 this compact legislation and has not withdrawn pursuant to
 172 subsection (1) of Article XIV of this compact or been terminated
 173 pursuant to subsection (2) of Article XIV of this compact.
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175 (4) "Commission" means the "Interstate Insurance Product
 176 Regulation Commission" established by this compact.

177 (5) "Commissioner" means the chief insurance regulatory
 178 official of a state, including, but not limited to, the
 179 commissioner, superintendent, director, or administrator. For
 180 purposes of this compact, the Commissioner of Insurance
 181 Regulation is the chief insurance regulatory official of this
 182 state.

183 (6) "Domiciliary state" means the state in which an insurer
 184 is incorporated or organized or, in the case of an alien
 185 insurer, its state of entry.

186 (7) "Insurer" means any entity licensed by a state to issue
 187 contracts of insurance for any of the lines of insurance covered
 188 by this compact.

189 (8) "Member" means the person chosen by a compacting state
 190 as its representative to the commission, or his or her designee.

191 (9) "Noncompacting state" means any state which is not at
 192 the time a compacting state.

193 (10) "Office" means the Office of Insurance Regulation of
 194 the Financial Services Commission.

195 (11) "Operating procedures" means procedures adopted by the
 196 commission as of March 1, 2013, and subsequent amendments
 197 thereto if the methodology remains substantially consistent,
 198 implementing a rule, uniform standard, or provision of this
 199 compact.

200 (12) "Product" means the form of a policy or contract,
 201 including any application, endorsement, or related form which is
 202 attached to and made a part of the policy or contract, and any
 203 evidence of coverage or certificate, for an individual or group

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204 annuity, life insurance, disability income, or long-term care
 205 insurance product that an insurer is authorized to issue.

206 (13) "Rule" means a statement of general or particular
 207 applicability and future effect adopted by the commission as of
 208 March 1, 2013, and subsequent amendments thereto if the
 209 methodology remains substantially consistent, including a
 210 uniform standard developed pursuant to Article VII of this
 211 compact, designed to implement, interpret, or prescribe law or
 212 policy or describe the organization, procedure, or practice
 213 requirements of the commission, which shall have the force and
 214 effect of law in the compacting states.

215 (14) "State" means any state, district, or territory of the
 216 United States.

217 (15) "Third-party filer" means an entity that submits a
 218 product filing to the commission on behalf of an insurer.

219 (16) "Uniform standard" means a standard adopted by the
 220 commission as of March 1, 2013, and subsequent amendments
 221 thereto if the methodology remains substantially consistent, for
 222 a product line pursuant to Article VII of this compact and shall
 223 include all of the product requirements in aggregate; provided,
 224 each uniform standard shall be construed, whether express or
 225 implied, to prohibit the use of any inconsistent, misleading, or
 226 ambiguous provisions in a product and the form of the product
 227 made available to the public shall not be unfair, inequitable,
 228 or against public policy as determined by the commission.

230 Article III

231 COMMISSION; ESTABLISHMENT; VENUE.—
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233 (1) The compacting states hereby create and establish a
 234 joint public agency known as the Interstate Insurance Product
 235 Regulation Commission. Pursuant to Article IV of this compact,
 236 the commission has the power to develop uniform standards for
 237 product lines, receive and provide prompt review of products
 238 filed with the commission, and give approval to those product
 239 filings satisfying applicable uniform standards; provided, it is
 240 not intended for the commission to be the exclusive entity for
 241 receipt and review of insurance product filings. Nothing in this
 242 article shall prohibit any insurer from filing its product in
 243 any state in which the insurer is licensed to conduct the
 244 business of insurance and any such filing shall be subject to
 245 the laws of the state where filed.

246 (2) The commission is a body corporate and politic and an
 247 instrumentality of the compacting states.

248 (3) The commission is solely responsible for its
 249 liabilities, except as otherwise specifically provided in this
 250 compact.

251 (4) Venue is proper and judicial proceedings by or against
 252 the commission shall be brought solely and exclusively in a
 253 court of competent jurisdiction where the principal office of
 254 the commission is located.

255 (5) The commission is a not-for-profit entity, separate and
 256 distinct from the individual compacting states.

257 Article IV

258 POWERS.—The commission shall have the following powers to:

260 (1) Adopt rules, pursuant to Article VII, which shall have
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262 the force and effect of law and shall be binding in the
 263 compacting states to the extent and in the manner provided in
 264 this compact.

265 (2) Exercise its rulemaking authority and establish
 266 reasonable uniform standards for products covered under the
 267 compact, and advertisement related thereto, which shall have the
 268 force and effect of law and shall be binding in the compacting
 269 states, but only for those products filed with the commission;
 270 provided a compacting state shall have the right to opt out of
 271 such uniform standard pursuant to Article VII to the extent and
 272 in the manner provided in this compact and any uniform standard
 273 established by the commission for long-term care insurance
 274 products may provide the same or greater protections for
 275 consumers as, but shall provide at least, those protections set
 276 forth in the National Association of Insurance Commissioners'
 277 Long-Term Care Insurance Model Act and Long-Term Care Insurance
 278 Model Regulation, respectively, adopted as of 2001. The
 279 commission shall consider whether any subsequent amendments to
 280 the National Association of Insurance Commissioners' Long-Term
 281 Care Insurance Model Act or Long-Term Care Insurance Model
 282 Regulation adopted by the National Association of Insurance
 283 Commissioners require amending of the uniform standards
 284 established by the commission for long-term care insurance
 285 products.

286 (3) Receive and review in an expeditious manner products
 287 filed with the commission and rate filings for disability income
 288 and long-term care insurance products and give approval of those
 289 products and rate filings that satisfy the applicable uniform
 290 standard, and such approval shall have the force and effect of

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291 law and be binding on the compacting states to the extent and in
 292 the manner provided in the compact.

293 (4) Receive and review in an expeditious manner
 294 advertisement relating to long-term care insurance products for
 295 which uniform standards have been adopted by the commission, and
 296 give approval to all advertisement that satisfies the applicable
 297 uniform standard. For any product covered under this compact,
 298 other than long-term care insurance products, the commission
 299 shall have the authority to require an insurer to submit all or
 300 any part of its advertisement with respect to that product for
 301 review or approval prior to use, if the commission determines
 302 that the nature of the product is such that an advertisement of
 303 the product could have the capacity or tendency to mislead the
 304 public. The actions of the commission as provided in this
 305 subsection shall have the force and effect of law and shall be
 306 binding in the compacting states to the extent and in the manner
 307 provided in the compact.

308 (5) Exercise its rulemaking authority and designate
 309 products and advertisement that may be subject to a self-
 310 certification process without the need for prior approval by the
 311 commission.

312 (6) Adopt operating procedures, pursuant to Article VII,
 313 which shall be binding in the compacting states to the extent
 314 and in the manner provided in this compact.

315 (7) Bring and prosecute legal proceedings or actions in its
 316 name as the commission; provided the standing of any state
 317 insurance department to sue or be sued under applicable law
 318 shall not be affected.

319 (8) Issue subpoenas requiring the attendance and testimony

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320 of witnesses and the production of evidence.

321 (9) Establish and maintain offices.

322 (10) Purchase and maintain insurance and bonds.

323 (11) Borrow, accept, or contract for services of personnel,
 324 including, but not limited to, employees of a compacting state.
 325 Any action under this subsection concerning employees of this
 326 state may only be taken upon the express written consent of the
 327 state.

328 (12) Hire employees, professionals, or specialists; elect
 329 or appoint officers and fix their compensation, define their
 330 duties, give them appropriate authority to carry out the
 331 purposes of the compact, and determine their qualifications; and
 332 establish the commission's personnel policies and programs
 333 relating to, among other things, conflicts of interest, rates of
 334 compensation, and qualifications of personnel.

335 (13) Accept any and all appropriate donations and grants of
 336 money, equipment, supplies, materials, and services and to
 337 receive, use, and dispose of the same; provided at all times the
 338 commission shall avoid any appearance of impropriety.

339 (14) Lease, purchase, and accept appropriate gifts or
 340 donations of, or otherwise to own, hold, improve, or use, any
 341 property, real, personal, or mixed; provided at all times the
 342 commission shall avoid any appearance of impropriety.

343 (15) Sell, convey, mortgage, pledge, lease, exchange,
 344 abandon, or otherwise dispose of any property, real, personal,
 345 or mixed.

346 (16) Remit filing fees to compacting states as may be set
 347 forth in the bylaws, rules, or operating procedures.

348 (17) Enforce compliance by compacting states with rules,

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349 uniform standards, operating procedures, and bylaws.

350 (18) Provide for dispute resolution among compacting
351 states.

352 (19) Advise compacting states on issues relating to
353 insurers domiciled or doing business in noncompacting
354 jurisdictions, consistent with the purposes of this compact.

355 (20) Provide advice and training to those personnel in
356 state insurance departments responsible for product review and
357 to be a resource for state insurance departments.

358 (21) Establish a budget and make expenditures.

359 (22) Borrow money, provided that this power does not, in
360 any manner, obligate the financial resources of the State of
361 Florida.

362 (23) Appoint committees, including advisory committees,
363 comprising members, state insurance regulators, state
364 legislators or their representatives, insurance industry and
365 consumer representatives, and such other interested persons as
366 may be designated in the bylaws.

367 (24) Provide and receive information from and to cooperate
368 with law enforcement agencies.

369 (25) Adopt and use a corporate seal.

370 (26) Perform such other functions as may be necessary or
371 appropriate to achieve the purposes of this compact consistent
372 with the state regulation of the business of insurance.

373

374 Article V

375

376 ORGANIZATION.-

377 (1) Membership; voting; bylaws.-

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378 (a)1. Each compacting state shall have and be limited to
379 one member. Each member shall be qualified to serve in that
380 capacity pursuant to applicable law of the compacting state. Any
381 member may be removed or suspended from office as provided by
382 the law of the state from which he or she is appointed. Any
383 vacancy occurring in the commission shall be filled in
384 accordance with the laws of the compacting state in which the
385 vacancy exists. Nothing in this article shall be construed to
386 affect the manner in which a compacting state determines the
387 election or appointment and qualification of its own
388 commissioner. However, the commissioner may designate a person
389 to represent this state on the commission, as is necessary, in
390 order to fulfill the duties of being a member of the commission.

391 2. The Commissioner of Insurance Regulation is hereby
392 designated to serve as the representative of this state on the
393 commission. However, the commissioner may designate a person to
394 represent this state on the commission, as is necessary, in
395 order to fulfill the duties of being a member of the commission.

396 (b) Each member shall be entitled to one vote and shall
397 have an opportunity to participate in the governance of the
398 commission in accordance with the bylaws. Notwithstanding any
399 other provision of this article, no action of the commission
400 with respect to the adoption of a uniform standard shall be
401 effective unless two-thirds of the members vote in favor of such
402 action.

403 (c) The commission shall, by a majority of the members,
404 prescribe bylaws to govern its conduct as may be necessary or
405 appropriate to carry out the purposes and exercise the powers of
406 the compact, including, but not limited to:

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407 1. Establishing the fiscal year of the commission.
 408 2. Providing reasonable procedures for appointing and
 409 electing members, as well as holding meetings, of the management
 410 committee.
 411 3. Providing reasonable standards and procedures:
 412 a. For the establishment and meetings of other committees.
 413 b. Governing any general or specific delegation of any
 414 authority or function of the commission.
 415 4. Providing reasonable procedures for calling and
 416 conducting meetings of the commission that consist of a majority
 417 of commission members, ensuring reasonable advance notice of
 418 each such meeting, and providing for the right of citizens to
 419 attend each such meeting with enumerated exceptions designed to
 420 protect the public's interest, the privacy of individuals, and
 421 insurers' proprietary information, including, but not limited
 422 to, trade secrets. The commission may meet in camera only after
 423 a majority of the entire membership votes to close a meeting in
 424 total or in part. The commissioner of this state, or the
 425 commissioner's designee, may attend, or otherwise participate
 426 in, a meeting or executive session that is closed in total or
 427 part to the extent such attendance or participation is
 428 consistent with Florida law. As soon as practicable, the
 429 commission must make public a copy of the vote to close the
 430 meeting revealing the vote of each member with no proxy votes
 431 allowed, and votes taken during such meeting. All notices of
 432 commission meetings, including instructions for public
 433 participation, provided to the office, the commissioner, or the
 434 commissioner's designee shall be published in the Florida
 435 Administrative Register.

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436 5. Establishing the titles, duties, and authority and
 437 reasonable procedures for the election of the officers of the
 438 commission.
 439 6. Providing reasonable standards and procedures for the
 440 establishment of the personnel policies and programs of the
 441 commission. Notwithstanding any civil service or other similar
 442 laws of any compacting state, the bylaws shall exclusively
 443 govern the personnel policies and programs of the commission.
 444 7. Adopting a code of ethics to address permissible and
 445 prohibited activities of commission members and employees. This
 446 code does not supersede or otherwise limit the obligations and
 447 duties of this state's commissioner or the commissioner's
 448 designee under ethics laws or rules of the State of Florida. To
 449 the extent there is any inconsistency between the standards
 450 imposed by this code and the standards imposed under this
 451 state's ethics laws or rules, the commissioner or the
 452 commissioner's designee must adhere to the stricter standard of
 453 conduct.
 454 8. Providing a mechanism for winding up the operations of
 455 the commission and the equitable disposition of any surplus
 456 funds that may exist after the termination of the compact after
 457 the payment or reserving of all debts and obligations of the
 458 commission.
 459 (d) The commission shall publish its bylaws in a convenient
 460 form and file a copy of such bylaws and a copy of any amendment
 461 to such bylaws, with the appropriate agency or officer in each
 462 of the compacting states.
 463 (2) Management committee, officers, and personnel.-
 464 (a) A management committee comprising no more than 14

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465 members shall be established as follows:

466 1. One member from each of the six compacting states with
 467 the largest premium volume for individual and group annuities,
 468 life, disability income, and long-term care insurance products,
 469 determined from the records of the National Association of
 470 Insurance Commissioners for the prior year.

471 2. Four members from those compacting states with at least
 472 2 percent of the market based on the premium volume described
 473 above, other than the six compacting states with the largest
 474 premium volume, selected on a rotating basis as provided in the
 475 bylaws.

476 3. Four members from those compacting states with less than
 477 2 percent of the market, based on the premium volume described
 478 above, with one selected from each of the four zone regions of
 479 the National Association of Insurance Commissioners as provided
 480 in the bylaws.

481 (b) The management committee shall have such authority and
 482 duties as may be set forth in the bylaws, including, but not
 483 limited to:

484 1. Managing the affairs of the commission in a manner
 485 consistent with the bylaws and purposes of the commission.

486 2. Establishing and overseeing an organizational structure
 487 within, and appropriate procedures for, the commission to
 488 provide for the creation of uniform standards and other rules,
 489 receipt and review of product filings, administrative and
 490 technical support functions, review of decisions regarding the
 491 disapproval of a product filing, and the review of elections
 492 made by a compacting state to opt out of a uniform standard;
 493 provided a uniform standard shall not be submitted to the

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494 compacting states for adoption unless approved by two-thirds of
 495 the members of the management committee.

496 3. Overseeing the offices of the commission.

497 4. Planning, implementing, and coordinating communications
 498 and activities with other state, federal, and local government
 499 organizations in order to advance the goals of the commission.

500 (c) The commission shall elect annually officers from the
 501 management committee, with each having such authority and duties
 502 as may be specified in the bylaws.

503 (d) The management committee may, subject to the approval
 504 of the commission, appoint or retain an executive director for
 505 such period, upon such terms and conditions, and for such
 506 compensation as the commission may deem appropriate. The
 507 executive director shall serve as secretary to the commission
 508 but shall not be a member of the commission. The executive
 509 director shall hire and supervise such other staff as may be
 510 authorized by the commission.

511 (3) Legislative and advisory committees.-

512 (a) A legislative committee comprised of state legislators
 513 or their designees shall be established to monitor the
 514 operations of and make recommendations to the commission,
 515 including the management committee; provided the manner of
 516 selection and term of any legislative committee member shall be
 517 as set forth in the bylaws. Prior to the adoption by the
 518 commission of any uniform standard, revision to the bylaws,
 519 annual budget, or other significant matter as may be provided in
 520 the bylaws, the management committee shall consult with and
 521 report to the legislative committee.

522 (b) The commission shall establish two advisory committees,

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523 one comprising consumer representatives independent of the
 524 insurance industry and the other comprising insurance industry
 525 representatives.

526 (c) The commission may establish additional advisory
 527 committees as the bylaws may provide for the carrying out of
 528 commission functions.

529 (4) Corporate records of the commission.—The commission
 530 shall maintain its corporate books and records in accordance
 531 with the bylaws.

532 (5) Qualified immunity, defense and indemnification.—

533 (a) The members, officers, executive director, employees,
 534 and representatives of the commission shall be immune from suit
 535 and liability, either personally or in their official capacity,
 536 for any claim for damage to or loss of property or personal
 537 injury or other civil liability caused by or arising out of any
 538 actual or alleged act, error, or omission that occurred, or that
 539 the person against whom the claim is made had a reasonable basis
 540 for believing occurred within the scope of commission
 541 employment, duties, or responsibilities; provided nothing in
 542 this paragraph shall be construed to protect any such person
 543 from suit or liability for any damage, loss, injury, or
 544 liability caused by the intentional or willful and wanton
 545 misconduct of that person.

546 (b) The liability of the members, officers, executive
 547 director, employees, and representatives of the commission
 548 acting within the scope of such persons' employment or duties,
 549 for acts, errors, or omissions occurring within this state, may
 550 not exceed the limits of liability set forth under the
 551 constitution and laws of this state for state officials,

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552 employees, and agents. The commission is an instrumentality of
 553 the state for the purposes of any such action. This subsection
 554 does not protect such persons from suit or liability for damage,
 555 loss, injury, or liability caused by a criminal act or the
 556 intentional or willful and wanton misconduct of such person.

557 (c) The commission shall defend any member, officer,
 558 executive director, employee, or representative of the
 559 commission in any civil action seeking to impose liability
 560 arising out of any actual or alleged act, error, or omission
 561 that occurred within the scope of commission employment, duties,
 562 or responsibilities, or where the person against whom the claim
 563 is made has a reasonable basis for believing occurred within the
 564 scope of commission employment, duties, or responsibilities if
 565 the actual or alleged act, error, or omission did not result
 566 from that person's intentional or willful and wanton misconduct.
 567 This article does not prohibit that person from retaining his or
 568 her own counsel.

569 (d) The commission shall indemnify and hold harmless any
 570 member, officer, executive director, employee, or representative
 571 of the commission for the amount of any settlement or judgment
 572 obtained against that person arising out of any actual or
 573 alleged act, error, or omission that occurred within the scope
 574 of commission employment, duties, or responsibilities, or that
 575 such person had a reasonable basis for believing occurred within
 576 the scope of commission employment, duties, or responsibilities;
 577 provided the actual or alleged act, error, or omission did not
 578 result from the intentional or willful and wanton misconduct of
 579 that person.

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581 Article VI

582 MEETINGS; ACTS.—

583 (1) The commission shall meet and take such actions as are
 584 consistent with the provisions of this compact and the bylaws.

585 (2) Each member of the commission shall have the right and
 586 power to cast a vote to which that compacting state is entitled
 587 and to participate in the business and affairs of the
 588 commission. A member shall vote in person or by such other means
 589 as provided in the bylaws. The bylaws may provide for members'
 590 participation in meetings by telephone or other means of
 591 communication.

592 (3) The commission shall meet at least once during each
 593 calendar year. Additional meetings shall be held as set forth in
 594 the bylaws.

595 Article VII

596 RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE
 597 COMMISSION; OPTING OUT OF UNIFORM STANDARDS.—

600 (1) Rulemaking authority.—The commission shall adopt
 601 reasonable rules, including uniform standards, and operating
 602 procedures in order to effectively and efficiently achieve the
 603 purposes of this compact. Notwithstanding such requirement, if
 604 the commission exercises its rulemaking authority in a manner
 605 that is beyond the scope of the purposes of this compact or the
 606 powers granted under this compact, such action by the commission
 607 shall be invalid and have no force and effect.

608 (2) Rulemaking procedure.—Rules and operating procedures
 609

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610 shall be made pursuant to a rulemaking process that conforms to
 611 the Model State Administrative Procedure Act of 1981, as
 612 amended, as may be appropriate to the operations of the
 613 commission. Before the commission adopts a uniform standard, the
 614 commission shall give written notice to the relevant state
 615 legislative committees in each compacting state responsible for
 616 insurance issues of its intention to adopt the uniform standard.
 617 The commission in adopting a uniform standard shall consider
 618 fully all submitted materials and issue a concise explanation of
 619 its decision.

620 (3) Effective date and opt out of a uniform standard.—A
 621 uniform standard shall become effective 90 days after its
 622 adoption by the commission or such later date as the commission
 623 may determine; provided a compacting state may opt out of a
 624 uniform standard as provided in this act. The term "opt out"
 625 means any action by a compacting state to decline to adopt or
 626 participate in an adopted uniform standard. All other rules and
 627 operating procedures, and amendments thereto, shall become
 628 effective as of the date specified in each rule, operating
 629 procedure, or amendment.

630 (4) Opt out procedure.—

631 (a) A compacting state may opt out of a uniform standard by
 632 legislation or regulation adopted by the compacting state under
 633 such state's Administrative Procedure Act. If a compacting state
 634 elects to opt out of a uniform standard by regulation, such
 635 state must:

636 1. Give written notice to the commission no later than 10
 637 business days after the uniform standard is adopted, or at the
 638 time the state becomes a compacting state.

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639 2. Find that the uniform standard does not provide
 640 reasonable protections to the citizens of the state, given the
 641 conditions in the state.

642 (b) The commissioner of a compacting state other than this
 643 state shall make specific findings of fact and conclusions of
 644 law, based on a preponderance of the evidence, detailing the
 645 conditions in the state which warrant a departure from the
 646 uniform standard and determining that the uniform standard would
 647 not reasonably protect the citizens of the state. The
 648 commissioner must consider and balance the following factors and
 649 find that the conditions in the state and needs of the citizens
 650 of the state outweigh:

651 1. The intent of the Legislature to participate in, and the
 652 benefits of, an interstate agreement to establish national
 653 uniform consumer protections for the products subject to this
 654 compact.

655 2. The presumption that a uniform standard adopted by the
 656 commission provides reasonable protections to consumers of the
 657 relevant product.

658 Notwithstanding this subsection, a compacting state may, at the
 659 time of its enactment of this compact, prospectively opt out of
 660 all uniform standards involving long-term care insurance
 661 products by expressly providing for such opt out in the enacted
 662 compact, and such an opt out shall not be treated as a material
 663 variance in the offer or acceptance of any state to participate
 664 in this compact. Such an opt out shall be effective at the time
 665 of enactment of this compact by the compacting state and shall
 666 apply to all existing uniform standards involving long-term care
 667

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668 insurance products and those subsequently adopted.

669 (5) Effect of opting out.—If a compacting state elects to
 670 opt out of a uniform standard, the uniform standard shall remain
 671 applicable in the compacting state electing to opt out until
 672 such time as the opt out legislation is enacted into law or the
 673 regulation opting out becomes effective. Once the opt out of a
 674 uniform standard by a compacting state becomes effective as
 675 provided under the laws of that state, the uniform standard
 676 shall have no further force and effect in that state unless and
 677 until the legislation or regulation implementing the opt out is
 678 repealed or otherwise becomes ineffective under the laws of the
 679 state. If a compacting state opts out of a uniform standard
 680 after the uniform standard has been made effective in that
 681 state, the opt out shall have the same prospective effect as
 682 provided under Article XIV for withdrawals.

683 (6) Stay of uniform standard.—If a compacting state has
 684 formally initiated the process of opting out of a uniform
 685 standard by regulation, and while the regulatory opt out is
 686 pending, the compacting state may petition the commission, at
 687 least 15 days before the effective date of the uniform standard,
 688 to stay the effectiveness of the uniform standard in that state.
 689 The commission may grant a stay if the commission determines the
 690 regulatory opt out is being pursued in a reasonable manner and
 691 there is a likelihood of success. If a stay is granted or
 692 extended by the commission, the stay or extension thereof may
 693 postpone the effective date by up to 90 days, unless
 694 affirmatively extended by the commission; provided a stay may
 695 not be permitted to remain in effect for more than 1 year unless
 696 the compacting state can show extraordinary circumstances which

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697 warrant a continuance of the stay, including, but not limited
 698 to, the existence of a legal challenge which prevents the
 699 compacting state from opting out. A stay may be terminated by
 700 the commission upon notice that the rulemaking process has been
 701 terminated.

702 (7) Judicial review.—Within 30 days after a rule or
 703 operating procedure is adopted, any person may file a petition
 704 for judicial review of the rule or operating procedure; provided
 705 the filing of such a petition shall not stay or otherwise
 706 prevent the rule or operating procedure from becoming effective
 707 unless the court finds that the petitioner has a substantial
 708 likelihood of success. The court shall give deference to the
 709 actions of the commission consistent with applicable law and
 710 shall not find the rule or operating procedure to be unlawful if
 711 the rule or operating procedure represents a reasonable exercise
 712 of the commission's authority.

714 Article VIII

715 COMMISSION RECORDS AND ENFORCEMENT.—

716 (1) The commission shall adopt rules establishing
 717 conditions and procedures for public inspection and copying of
 718 its information and official records, except such information
 719 and records involving the privacy of individuals and insurers'
 720 trade secrets. The commission may adopt additional rules under
 721 which the commission may make available to federal and state
 722 agencies, including law enforcement agencies, records and
 723 information otherwise exempt from disclosure and may enter into
 724 agreements with such agencies to receive or exchange information
 725

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726 or records subject to nondisclosure and confidentiality
 727 provisions.

728 (2) Except as to privileged records, data, and information,
 729 the laws of any compacting state pertaining to confidentiality
 730 or nondisclosure shall not relieve any compacting state
 731 commissioner of the duty to disclose any relevant records, data,
 732 or information to the commission; provided disclosure to the
 733 commission shall not be deemed to waive or otherwise affect any
 734 confidentiality requirement; and further provided, except as
 735 otherwise expressly provided in this compact, the commission
 736 shall not be subject to the compacting state's laws pertaining
 737 to confidentiality and nondisclosure with respect to records,
 738 data, and information in its possession. Confidential
 739 information of the commission shall remain confidential after
 740 such information is provided to any commissioner; however, all
 741 requests from the public to inspect or copy records, data, or
 742 information of the commission, wherever received, by and in the
 743 possession of the office, commissioner, or the commissioner's
 744 designee shall be subject to chapter 119, Florida Statutes.

745 (3) The commission shall monitor compacting states for
 746 compliance with duly adopted bylaws, rules, uniform standards,
 747 and operating procedures. The commission shall notify any
 748 noncomplying compacting state in writing of its noncompliance
 749 with commission bylaws, rules, or operating procedures. If a
 750 noncomplying compacting state fails to remedy its noncompliance
 751 within the time specified in the notice of noncompliance, the
 752 compacting state shall be deemed to be in default as set forth
 753 in Article XIV of this compact.

754 (4) The commissioner of any state in which an insurer is

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755 authorized to do business or is conducting the business of
 756 insurance shall continue to exercise his or her authority to
 757 oversee the market regulation of the activities of the insurer
 758 in accordance with the provisions of the state's law. The
 759 commissioner's enforcement of compliance with the compact is
 760 governed by the following provisions:

761 (a) With respect to the commissioner's market regulation of
 762 a product or advertisement that is approved or certified to the
 763 commission, the content of the product or advertisement shall
 764 not constitute a violation of the provisions, standards, or
 765 requirements of the compact except upon a final order of the
 766 commission, issued at the request of a commissioner after prior
 767 notice to the insurer and an opportunity for hearing before the
 768 commission.

769 (b) Before a commissioner may bring an action for violation
 770 of any provision, standard, or requirement of the compact
 771 relating to the content of an advertisement not approved or
 772 certified to the commission, the commission, or an authorized
 773 commission officer or employee, must authorize the action.
 774 However, authorization pursuant to this paragraph does not
 775 require notice to the insurer, opportunity for hearing, or
 776 disclosure of requests for authorization or records of the
 777 commission's action on such requests.

778 Article IX

781 DISPUTE RESOLUTION.—The commission shall attempt, upon the
 782 request of a member, to resolve any disputes or other issues
 783 that are subject to this compact and which may arise between two

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784 or more compacting states, or between compacting states and
 785 noncompacting states, and the commission shall adopt an
 786 operating procedure providing for resolution of such disputes.

787 Article X

790 PRODUCT FILING AND APPROVAL.—

791 (1) Insurers and third-party filers seeking to have a
 792 product approved by the commission shall file the product with
 793 and pay applicable filing fees to the commission. Nothing in
 794 this compact shall be construed to restrict or otherwise prevent
 795 an insurer from filing its product with the insurance department
 796 in any state in which the insurer is licensed to conduct the
 797 business of insurance and such filing shall be subject to the
 798 laws of the states where filed.

799 (2) The commission shall establish appropriate filing and
 800 review processes and procedures pursuant to commission rules and
 801 operating procedures. Notwithstanding any provision of this
 802 article, the commission shall adopt rules to establish
 803 conditions and procedures under which the commission will
 804 provide public access to product filing information. In
 805 establishing such rules, the commission shall consider the
 806 interests of the public in having access to such information, as
 807 well as protection of personal medical and financial information
 808 and trade secrets, that may be contained in a product filing or
 809 supporting information.

810 (3) Any product approved by the commission may be sold or
 811 otherwise issued in those compacting states for which the
 812 insurer is legally authorized to do business.

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813
814 Article XI

815 REVIEW OF COMMISSION DECISIONS REGARDING FILINGS.—

816 (1) Within 30 days after the commission has given notice of
817 a disapproved product or advertisement filed with the
818 commission, the insurer or third-party filer whose filing was
819 disapproved may appeal the determination to a review panel
820 appointed by the commission. The commission shall adopt rules to
821 establish procedures for appointing such review panels and
822 provide for notice and hearing. An allegation that the
823 commission, in disapproving a product or advertisement filed
824 with the commission, acted arbitrarily, capriciously, or in a
825 manner that is an abuse of discretion or otherwise not in
826 accordance with the law, is subject to judicial review in
827 accordance with subsection (4) of Article III.

828 (2) The commission shall have authority to monitor, review,
829 and reconsider products and advertisement subsequent to their
830 filing or approval upon a finding that the product does not meet
831 the relevant uniform standard. Where appropriate, the commission
832 may withdraw or modify its approval after proper notice and
833 hearing, subject to the appeal process in subsection (1).

834 Article XII

835 FINANCE.—

836 (1) The commission shall pay or provide for the payment of
837 the reasonable expenses of the commission's establishment and
838 organization. To fund the cost of the commission's initial
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842 operations, the commission may accept contributions and other
843 forms of funding from the National Association of Insurance
844 Commissioners, compacting states, and other sources.
845 Contributions and other forms of funding from other sources
846 shall be of such a nature that the independence of the
847 commission concerning the performance of commission duties shall
848 not be compromised.

849 (2) The commission shall collect a filing fee from each
850 insurer and third-party filer filing a product with the
851 commission to cover the cost of the operations and activities of
852 the commission and its staff in a total amount sufficient to
853 cover the commission's annual budget.

854 (3) The commission's budget for a fiscal year shall not be
855 approved until the budget has been subject to notice and comment
856 as set forth in Article VII.

857 (4) The commission shall be exempt from all taxation in and
858 by the compacting states.

859 (5) The commission shall not pledge the credit of any
860 compacting state, except by and with the appropriate legal
861 authority of that compacting state.

862 (6) The commission shall keep complete and accurate
863 accounts of all its internal receipts, including grants and
864 donations, and disbursements of all funds under its control. The
865 internal financial accounts of the commission shall be subject
866 to the accounting procedures established under its bylaws. The
867 financial accounts and reports including the system of internal
868 controls and procedures of the commission shall be audited
869 annually by an independent certified public accountant. Upon the
870 determination of the commission, but no less frequently than

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871 every 3 years, the review of the independent auditor shall
 872 include a management and performance audit of the commission.
 873 The commission shall make an annual report to the Governor and
 874 the presiding officers of the Legislature of the compacting
 875 states, which shall include a report of the independent audit.
 876 The commission's internal accounts shall not be confidential and
 877 such materials may be shared with the commissioner of any
 878 compacting state upon request; provided any work papers related
 879 to any internal or independent audit and any information
 880 regarding the privacy of individuals and insurers' proprietary
 881 information, including trade secrets, shall remain confidential.
 882 (7) No compacting state shall have any claim to or
 883 ownership of any property held by or vested in the commission or
 884 to any commission funds held pursuant to the provisions of this
 885 compact.

887 Article XIII

889 COMPACTING STATES, EFFECTIVE DATE, AMENDMENT.—

890 (1) Any state is eligible to become a compacting state.
 891 (2) The compact shall become effective and binding upon
 892 legislative enactment of the compact into law by two compacting
 893 states; provided the commission shall become effective for
 894 purposes of adopting uniform standards for, reviewing, and
 895 giving approval or disapproval of, products filed with the
 896 commission that satisfy applicable uniform standards only after
 897 26 states are compacting states or, alternatively, by states
 898 representing greater than 40 percent of the premium volume for
 899 life insurance, annuity, disability income, and long-term care

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900 insurance products, based on records of the National Association
 901 of Insurance Commissioners for the prior year. Thereafter, the
 902 compact shall become effective and binding as to any other
 903 compacting state upon enactment of the compact into law by that
 904 state.

905 (3) Amendments to the compact may be proposed by the
 906 commission for enactment by the compacting states. No amendment
 907 shall become effective and binding upon the commission and the
 908 compacting states unless and until all compacting states enact
 909 the amendment into law.

910 Article XIV

912 WITHDRAWAL; DEFAULT; DISSOLUTION.—

913 (1) Withdrawal.—
 914 (a) Once effective, the compact shall continue in force and
 915 remain binding upon each and every compacting state; provided a
 916 compacting state may withdraw from the compact by enacting a law
 917 specifically repealing the law which enacted the compact into
 918 law.
 919 (b) The effective date of withdrawal is the effective date
 920 of the repealing law. However, the withdrawal shall not apply to
 921 any product filings approved or self-certified, or any
 922 advertisement of such products, on the date the repealing law
 923 becomes effective, except by mutual agreement of the commission
 924 and the withdrawing state unless the approval is rescinded by
 925 the withdrawing state as provided in paragraph (e).
 926 (c) The commissioner of the withdrawing state shall
 927 immediately notify the management committee in writing upon the
 928 compact.

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929 introduction of legislation repealing this compact in the
 930 withdrawing state.

931 (d) The commission shall notify the other compacting states
 932 of the introduction of such legislation within 10 days after the
 933 commission's receipt of notice of such legislation.

934 (e) The withdrawing state is responsible for all
 935 obligations, duties, and liabilities incurred through the
 936 effective date of withdrawal, including any obligations, the
 937 performance of which extend beyond the effective date of
 938 withdrawal, except to the extent those obligations may have been
 939 released or relinquished by mutual agreement of the commission
 940 and the withdrawing state. The commission's approval of products
 941 and advertisement prior to the effective date of withdrawal
 942 shall continue to be effective and be given full force and
 943 effect in the withdrawing state unless formally rescinded by the
 944 withdrawing state in the same manner as provided by the laws of
 945 the withdrawing state for the prospective disapproval of
 946 products or advertisement previously approved under state law.

947 (f) Reinstatement following withdrawal of any compacting
 948 state shall occur upon the effective date of the withdrawing
 949 state reenacting the compact.

950 (2) Default.—

951 (a) If the commission determines that any compacting state
 952 has at any time defaulted in the performance of any of its
 953 obligations or responsibilities under this compact, the bylaws,
 954 or duly adopted rules or operating procedures, after notice and
 955 hearing as set forth in the bylaws, all rights, privileges, and
 956 benefits conferred by this compact on the defaulting state shall
 957 be suspended from the effective date of default as fixed by the

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958 commission. The grounds for default include, but are not limited
 959 to, failure of a compacting state to perform its obligations or
 960 responsibilities, and any other grounds designated in commission
 961 rules. The commission shall immediately notify the defaulting
 962 state in writing of the defaulting state's suspension pending a
 963 cure of the default. The commission shall stipulate the
 964 conditions and the time period within which the defaulting state
 965 must cure its default. If the defaulting state fails to cure the
 966 default within the time period specified by the commission, the
 967 defaulting state shall be terminated from the compact and all
 968 rights, privileges, and benefits conferred by this compact shall
 969 be terminated from the effective date of termination.

970 (b) Product approvals by the commission or product self-
 971 certifications, or any advertisement in connection with such
 972 product that are in force on the effective date of termination
 973 shall remain in force in the defaulting state in the same manner
 974 as if the defaulting state had withdrawn voluntarily pursuant to
 975 subsection (1).

976 (c) Reinstatement following termination of any compacting
 977 state requires a reenactment of the compact.

978 (3) Dissolution of compact.—

979 (a) The compact dissolves effective upon the date of the
 980 withdrawal or default of the compacting state which reduces
 981 membership in the compact to a single compacting state.

982 (b) Upon the dissolution of this compact, the compact
 983 becomes null and void and shall be of no further force or effect
 984 and the business and affairs of the commission shall be
 985 concluded and any surplus funds shall be distributed in
 986 accordance with the bylaws.

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1015Article XVSEVERABILITY; CONSTRUCTION.—

(1) The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVIBINDING EFFECT OF COMPACT AND OTHER LAWS.—(1) Binding effect of this compact.—

(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) If any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state and

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those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of such state to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

(2) Other laws.—

(a) Nothing in this compact prevents the enforcement of any other law of a compacting state, except as provided in paragraph (b).

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding this paragraph, no action taken by the commission shall abrogate or restrict:

1. The access of any person to state courts;
2. Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;
3. State law relating to the construction of insurance contracts; or
4. The authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

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1045 (c) All insurance products filed with individual states
 1046 shall be subject to the laws of those states.

1047 Section 3. Election to opt out of all uniform standards
 1048 adopted by the commission involving long-term care insurance
 1049 products; adoption of existing uniform standards of the
 1050 commission; procedure for adoption of new or amended uniform
 1051 standards; notification of new or amended uniform standards:

1052 (1) Pursuant to Article VII of the compact, authorized in
 1053 this act, the State of Florida prospectively opts out of all
 1054 uniform standards adopted by the commission involving long-term
 1055 care insurance products, and such opt out shall not be treated
 1056 as a material variance in the offer or acceptance of this state
 1057 to participate in the compact.

1058 (2) Except as provided in subsection (1), all uniform
 1059 standards adopted by the commission as of March 1, 2013 are
 1060 adopted by this state.

1061 (3) Notwithstanding subsections (3), (4), (5), and (6) of
 1062 Article VII, as a participant in this compact, it is the policy
 1063 of the State of Florida to opt out, and the office shall opt
 1064 out, of any new uniform standard adopted by the commission after
 1065 March 1, 2013 or amendments to existing uniform standards
 1066 adopted by the commission after March 1, 2013 where such
 1067 amendments substantially alter or add to existing uniform
 1068 standards adopted by this state in subsection (2) until such
 1069 time as this state enacts legislation to adopt or opt out of new
 1070 uniform standards or such amendments to uniform standards
 1071 adopted by the commission after March 1, 2013.

1072 (4) The Financial Services Commission may adopt rules to
 1073 implement this act. It is the policy of the State of Florida

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1074 that this state's participation in new uniform standards or
 1075 amendments to uniform standards adopted after March 1, 2013 as
 1076 set out in subsection (3) that have not been legislatively
 1077 approved by this state may not reasonably protect the citizens
 1078 of this state based on Article XVI(1)(d) of this act. The
 1079 Financial Services Commission shall use the rulemaking authority
 1080 granted in this subsection to opt out of any new uniform
 1081 standards or amendments to existing uniform standards where such
 1082 amendments substantially alter or add to existing uniform
 1083 standards adopted by the State of Florida in subsection (2)
 1084 until such uniform standards are legislatively approved by this
 1085 state.

1086 (5) After enactment of this section, if the commission
 1087 adopts any new uniform standard or amendment to uniform
 1088 standards as set out in subsection (3), the office shall
 1089 immediately notify the legislature of such new uniform standard
 1090 or amendment to existing uniform standard. If the office or a
 1091 court of competent jurisdiction finds that the procedure set out
 1092 in subsection(3) has not been followed, notice shall be given to
 1093 the legislature, and reasonable and prompt measures shall be
 1094 taken to opt out of a uniform standard that has not been
 1095 legislatively approved by the State of Florida.

1096 Section 4. Notwithstanding subsection (4) of Article XII,
 1097 the commission is subject to:

1098 (1) State unemployment or reemployment taxes imposed
 1099 pursuant to chapter 443, Florida Statutes, in compliance with
 1100 the Federal Unemployment Tax Act, for any persons employed by
 1101 the commission who perform services for it within this state.

1102 (2) Taxation for any commission business or activity

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1103 conducted or performed in the State of Florida.

1104 Section 5. Notwithstanding subsections (1) and (2) of
1105 Article VIII, subsection (2) of Article X, and subsection (6) of
1106 Article XII of this act, a request by a resident of this state
1107 for public inspection and copying of information, data, or
1108 official records that includes:

1109 (1) Insurer's trade secrets shall be referred to the
1110 commissioner who shall respond to the request, with the
1111 cooperation and assistance of the commission, in accordance with
1112 section 624.4213, Florida Statutes; or

1113 (2) Matters of privacy of individuals shall be referred to
1114 the commissioner who shall respond to the request, with the
1115 cooperation and assistance of the commission, in accordance with
1116 section 119.071, Florida Statutes.

1117 (3) Nothing in this act abrogates a person's right to
1118 access information consistent with the Constitution and laws of
1119 the State of Florida.

1120 Section 6. The Financial Services Commission may adopt
1121 rules to implement this act. The Financial Services Commission
1122 may use the rulemaking authority granted in this section to opt
1123 out of any new uniform standards adopted after October 1, 2013,
1124 pursuant to Article VII, until such standards are approved by
1125 the Legislature.

1126 Section 7. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic _____

Bill Number 242
(if applicable)

Name Paul Sanford

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 S. Monroe St

Phone _____

Street

Tallahassee, FL 32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing RIC, ACLU

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

April 2, 2013

The Honorable Jeremy Ring
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Ring:

Senate Bill 242 relating to Interstate Insurance Product Regulation Compact has been referred to the Governmental Oversight and Accountability Committee. I am requesting your consideration on placing SB 242 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Joe McVaney, Staff Director of the Governmental Oversight & Accountability Committee
Courtney Hicks, Administrative Assistant of the Governmental Oversight & Accountability Committee

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1260

INTRODUCER: Committee on Ethics and Elections and Senator Ring

SUBJECT: Public Records

DATE: April 9, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	Naf	McVaney	GO	Favorable
3.			RC	
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:

CS/SB 1260 is the public records exemption bill that is linked to SB 1352. SB 1352 requires the uniform statewide voter registration application to include a field for a voter registration applicant’s e-mail address. Current law does not provide a public record exemption for the e-mail address of a voter or voter registration applicant.

This bill provides that the e-mail address of a voter registration applicant or a voter is confidential and exempt from public record requirements.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

This bill substantially amends section 97.0585, Florida Statutes.

II. Present Situation:

Public Records Laws

The State Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Voter Registration

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.¹³ The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.¹⁴

Public Record Exemption for Voter Registration Information

Current law also provides a public record exemption for certain information held by an agency¹⁵ for purposes of voter registration.¹⁶ Specifically, the following information is confidential and exempt¹⁷ from public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.¹⁸

The public record exemption applies to information held by an agency before, on, or after the effective date of the exemption.¹⁹

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 97.052(1), F.S.

¹⁴ Section 97.052(2), F.S.

¹⁵ The exemption applies to information held by an agency as defined in s. 119.011, F.S. Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

¹⁶ Section 97.0585, F.S.

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹⁸ Section 97.0585(2), F.S.

¹⁹ Section 97.0585(4), F.S.

SB 1352 (linked to this bill)

SB 1352 requires the uniform statewide voter registration application to include a field for a voter registration applicant's email address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

III. Effect of Proposed Changes:

This bill expands the current public record exemption for voter registration information. It provides that the e-mail address of a voter registration applicant or voter is confidential and exempt from public record requirements.

Current law provides for retroactive application of the public record exemption for voter registration information.²⁰

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature.

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

The bill provides that the exemption will take effect on the same date as Senate Bill 1352 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

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

Not applicable. Article VII, s. 18(d) of the State Constitution provides that election laws are exempt from the Municipality/County Mandates restrictions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or

²⁰ The Florida Supreme Court has ruled that a public record exemption may be applied retroactively only if the enacting legislation clearly express intent that such exemption is to be applied retroactively (*Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001)).

public meeting exemption. The bill expands the current public record exemption for voter information; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the email address of a voter or voter registration applicant. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Ethics and Elections on March 11, 2013:

The CS differs from the original bill in that it provides that the effective date of this provision is the same date that SB 1352 or similar legislation takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes law.

- B. **Amendments:**

None.

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

By the Committee on Ethics and Elections; and Senator Ring

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A bill to be entitled

An act relating to public records; amending s. 97.0585, F.S.; providing an exemption from public records requirements for the e-mail addresses of voter registration applicants and voters; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 97.0585, Florida Statutes, is amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency as defined in s. 119.011 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(a) All declinations to register to vote made pursuant to ss. 97.057 and 97.058.

(b) Information relating to the place where a person registered to vote or where a person updated a voter registration.

(c) The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

(d) The e-mail address of a voter registration applicant or

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voter.

(2) The signature of a voter registration applicant or a voter is exempt from the copying requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution in the same manner that the names, addresses, and telephone numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence which are held by the Attorney General under s. 741.465 are exempt from disclosure, provided that the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the procedures in ss. 741.401-741.409.

(4) This section applies to information held by an agency before, on, or after the effective date of this exemption.

(5) (a) Subsection (3) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) Paragraph (1)(d) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the e-mail address of a voter registration applicant or voter that is held by an agency be made confidential and exempt from public record requirements. E-mail addresses are personal information that could be misused and

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59 could result in voter fraud if released. A voter may request an
60 absentee ballot using an e-mail address. Public access to that
61 e-mail address could make others aware of those voters intending
62 to vote using an absentee ballot and could result in
63 confiscation and misuse of a mailed absentee ballot by a person
64 other than the registered voter before the registered voter
65 receives the requested absentee ballot. In addition, collection
66 of the e-mail address of a voter registration applicant or a
67 registered voter would allow the supervisors of elections to
68 send sample ballots electronically, thereby saving counties
69 money. If a voter registration applicant or a registered voter
70 knows that his or her e-mail address is subject to public
71 disclosure, he or she may be less willing to provide the address
72 to the supervisor of elections. Accordingly, the effective and
73 efficient administration of a government program would be
74 significantly impaired.

75 Section 3. This act shall take effect on the same date that
76 SB 1352 or similar legislation takes effect, if such legislation
77 is adopted in the same legislative session or an extension
78 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.)

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

BILL: CS/SB 1696

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Administrative Procedures

DATE: April 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Fav/CS
2.			JU	
3.			AP	
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:

CS/SB 1696 amends provisions of ch. 120, Florida Statutes, the Administrative Procedure Act (APA), to enhance the opportunity of substantially affected parties to challenge rules, mediate declaratory statements, and be awarded attorney fees in certain challenges. Specifically, the bill:

- Adopts a definition of “small business” applicable to the entire APA;
- Expands the class of small businesses benefiting from attorney fee awards under the Equal Access to Justice Act;
- Clarifies the burden of pleading and proof of challengers and agencies in challenges to proposed and unadopted rules;
- Removes the defense to an unadopted rule challenge that an agency did not know or should not have known that an agency statement or policy was an unadopted rule in cases where notice is actually provided;
- Extends the time to appeal certain final orders when notice thereof to the party appealing was delayed;
- Authorizes rule challenges in defense of agency actions on the same terms as petitions challenging rules and unadopted rules, including the award of attorney fees to prevailing challengers;

- Authorizes parties to request mediation in proceedings relating to declaratory statements and rule challenges;
- Removes discretion of Cabinet agencies to identify rules for which first time, minor violations should be addressed by a notice of noncompliance;
- Requires agencies to review their rules and certify those rules for which a violation would be considered a minor violation, and publish all such rules;
- Requires agencies to ensure that all investigative and enforcement personnel are knowledgeable of the agency's "minor violation" designations; and
- Requires agencies to certify whether any part of rules filed for adoption is designated as one the violation of which would be a minor violation.

The bill amends the attorney fee provision in Ch. 119, F.S., relating to public records, to provide that the "reasonable costs of enforcement" for which attorney fees may be awarded include reasonable attorney fees incurred in litigating entitlement to attorney fees for the underlying matter.

The bill also makes conforming changes to statutes cross-referencing provisions renumbered in the bill.

This bill amends sections 57.111, 119.12, 120.52, 120.55, 120.56, 120.569, 120.57, 120.573, 120.595, 120.68, 120.695, 420.9072, 420.9075, and 443.091 of the Florida Statutes.

II. Present Situation:

Public Records and Attorney Fees

The Public Records Act¹ guarantees every person's right to inspect and copy any state or local government public record² at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.³

Anyone who is denied access to a public record may file a civil action to seek a court order requiring the agency that denied access to open its records.⁴ If the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court must assess and award, against the agency responsible, the reasonable costs of enforcement. Reasonable costs of enforcement include reasonable attorney's fees.⁵

¹ Chapter 119, F.S.

² Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

³ Section 119.07(1)(a), F.S.

⁴ *See* s. 119.11, F.S.

⁵ Section 119.12, F.S.

Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.⁶ Rulemaking authority is delegated by the Legislature⁷ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”⁸ a rule. Agencies do not have discretion whether or not to engage in rulemaking.⁹ To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.¹⁰ The grant of rulemaking authority itself need not be detailed.¹¹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹²

Small Business

The APA provides certain accommodations for small businesses¹³ but only provides a definition of “small business” for use in s. 120.54(3)(b), F.S., which provides that an agency must consider the impact of rulemaking on small businesses defined for that purpose as employing less than 200 employees and having a net worth less than \$5 million.¹⁴ However, agencies are authorized to define “small business” to include businesses having more than 200 employees.

By contrast, Florida's Equal Access to Justice Act codified in ch. 57, F.S., provides for attorney fees to be awarded in administrative proceedings to a prevailing party who is a small business (defined in that instance as having not more than 25 employees and a net worth of not more than \$2 million).¹⁵

Notice of Rules

Presently, the only notice of adopted rules is the filing with the Department of State (DOS). The Department publishes such rules in the Florida Administrative Code. However, as a courtesy, the DOS, once each week, lists newly adopted rules in the Florida Administrative Register, and includes a cumulative list of rules filed for adoption pending legislative ratification.

⁶ Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

⁷ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁸ Section 120.52(17), F.S.

⁹ Section 120.54(1)(a), F.S.

¹⁰ Sections 120.52(8) and 120.536(1), F.S.

¹¹ *Save the Manatee Club, Inc.*, supra at 599.

¹² *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹³ Sections 120.54, 120.541, and 120.74, F.S.

¹⁴ Section 120.54(3)(b), F.S., incorporates by reference the definition of “small business” in s. 288.703(6), F.S.

¹⁵ Section 57.111, F.S.

Attorney Fees

For purposes of the Equal Access to Justice Act in awarding attorney fees to a small business, an agency action is reasonably justified if it has a reasonable basis in law and fact at the time the agency acted. In such cases, no fees are allowable.

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA provides for the recovery of attorney fees when a non-prevailing party has participated for an improper purpose; when an agency's actions are not substantially justified; when an agency relies upon an unadopted rule and is successfully challenged after 30 days notice of the need to adopt rules; and when an agency loses an appeal in a proceeding challenging an unadopted rule.¹⁶

An agency defense to attorney fees available in actions challenging agency statements defined as rules is that the agency did not know and should not have known that the agency statement was an unadopted rule. Additionally, attorney fees in such actions may be awarded only upon a finding that the agency received notice that the agency statement may constitute an unadopted rule at least 30 days before a petition challenging the agency statement is filed, and the agency fails to publish a notice of rulemaking within that 30 day period.¹⁷

These attorney fee provisions supplement the attorney fee provisions provided by other laws.¹⁸

Burden of Proof

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving a rule's invalidity.¹⁹ However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.²⁰ In addition, a rule may not be filed for adoption until any pending challenge is resolved.²¹

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.²²

Proceedings Involving Rule Challenges

The APA presently applies different procedures when proposed rules, existing rules and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to

¹⁶ Section 120.595, F.S.

¹⁷ Section 120.595(4)(b), F.S.

¹⁸ See, for example, ss. 57.105, 57.111, F.S. These sections are specifically preserved in s. 120.595(6), F.S.

¹⁹ Section 120.56(3), F.S.

²⁰ Section 120.56(2), F.S.

²¹ Section 120.54(3)(e)2., F.S.

²² Section 120.56(4), F.S.

the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that a Division of Administrative Hearings (DOAH) judge may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.²³ Additionally, in proceedings initiated by agency action, when a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejection or modifying such determination.²⁴

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeals.

Final Orders

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH judge enters the final order).

Mediation

The APA provides for mediation by agreement of the parties in those cases where the agency offers mediation to a person whose substantial interests are affected by an agency's action.²⁵ The APA does not require mediation in any particular case. Without any formal mediation, many administrative disputes are resolved by negotiation prior to, or after the initiation of formal proceedings in the Division of Administrative Hearings.

Declaratory Statements

The APA provides that a substantially affected person may request the issuance of a “declaratory statement” of an agency's opinion on the applicability of a law or rule over which the agency has authority to a particular set of facts set forth in the petition.²⁶ When issued, a declaratory statement is the agency's legal opinion that binds the agency under principles of estoppel. An agency has the option to deny the petition and typically will do so if a live enforcement action is pending with respect to similar facts.

²³ Section 120.57(1)(e)3., F.S.

²⁴ Section 120.57(1)(k-l), F.S.

²⁵ Section 120.573, F.S.

²⁶ Section 120.565, F.S.

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days of the rendering of the order.²⁷ An order, however, is rendered when filed with the agency clerk. On occasion, a party may not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute a party may not seek judicial review of the validity of a rule by appealing its adoption but authorizes an appeal from a final order in a rule challenge.²⁸

Minor Violations

The APA directs agencies to issue a “notice of noncompliance” as the first response when the agency encounters a first minor violation of a rule.²⁹ The law provides that a violation is a minor violation if it “does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.” Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from the definition of rulemaking under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.³⁰ An agency under the direction of a cabinet officer has the discretion not to use the “notice of noncompliance” once each licensee is provided a copy of all rules upon issuance of a license and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman³¹ in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. In carrying out duties as provided by law, the ombudsman must consult with Enterprise Florida, Inc., at which point the department may recommend to improve the regulatory environment of this state. The duties of the rules ombudsman are to:

- Carry out the responsibility related to rule adoption procedures with respect to small businesses;
- Review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and
- Make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to businesses.

²⁷ Section 120.68(2)(a), F.S.

²⁸ Section 120.68(9), F.S.

²⁹ Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."

³⁰ Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

³¹ The ombudsman is defined in s. 288.703(5), F.S., as an office or individual whose responsibilities include coordinating with the Office of Supplier Diversity for the interests of and providing assistance to small and minority business enterprises in dealing with governmental agencies and in developing proposals for changes in state agency rules.

Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

III. Effect of Proposed Changes:

Section 1 amends s. 57.111(3), F.S., to expand the definition of small business for the purpose of awarding attorney fees in administrative proceedings from 25 employees to 200 and from \$2 million net worth to \$5 million. This will greatly expand the number of businesses protected in administrative proceedings by the Equal Access to Justice Act.

In addition, the bill provides that an agency may not establish that its action is substantially justified if it acts in contradiction to its own declaratory statement or the agency denies a petition for declaratory statement and thereafter pursues enforcement on facts submitted in the petition.

Section 2 amends the attorney fee provision in Ch. 119, F.S., relating to public records, to provide that the “reasonable costs of enforcement” for which attorney fees may be awarded include reasonable attorney fees incurred in litigating entitlement to attorney fees for the underlying matter.

Section 3 amends s. 120.52, F.S., to adopt a definition of “small business” for the APA. The definition references s. 288.703, F.S., which defines “small business” as a business having less than 200 employees and \$5 million in net worth. As described above, that definition is already incorporated elsewhere in the APA. The effect might be interpreted to reduce the flexibility allowed in rulemaking for agencies by expanding the definition to businesses with 200 or more employees.

Section 4 amends s. 120.55, F.S., to enhance notice of new rules. The bill requires the Department of State to publish in the Florida Administrative Register a listing of rules filed for adoption in the previous 7 days, and a listing of all rules filed for adoption but awaiting legislative ratification.

The bill also requires those agencies with e-mail alert services that provide regulatory information to interested parties to include notices of new rule development, proposed rules, and notice of adoption of rules in those e-mail alerts.

Section 5 amends s. 120.56, F.S., relating to petitions challenging the validity of rules, proposed rules, and unadopted rules. The changes clarify the terminology relating to unadopted rules. The bill also clarifies the initial burden on the petitioner for pleading on challenges to proposed rules and unadopted rules. For unadopted rules the revision requires the agency to prove, after the petitioner presents a prima facie case, that the statement alleged to be an unadopted rule is not a rule, that it was validly adopted, or that rulemaking is not feasible or not practicable.

Section 6 amends s. 120.569(2)(1), F.S., to alter the time for entry of final orders in proceedings relating to agency actions to allow, at the agency's discretion, for legal appeals of rule challenges proceeding concurrently with the enforcement action. An agency will have 10 days after the determination of the appeal to enter the final order on a related matter.

Section 7 amends s. 120.57, F.S., relating to hearings at the DOAH on agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the provisions related to rule challenges in s. 120.56, F.S., and allows the DOAH judge to enter a final order on the challenge to the validity of a rule or to an unadopted rule. The bill allows the agency, within 15 days of notice of the challenge, to waive its reliance on an unadopted rule or a rule alleged to be invalid, and thereby eliminate that aspect of the litigation, without prejudice to the agency reasserting its position in another matter or lawsuit.

To conform to the intention that rule challenges be fairly litigated in defensive cases, the bill excludes those challenges from summary final order procedures.

The section also revises the procedures of using challenges to the validity of rules and unadopted rules in defensive cases where there is no dispute of material fact, staying the proceeding on agency action during a separate proceeding challenging the rule.

Section 8 amends s. 120.573, F.S., relating to mediation of disputes, to authorize a party to request mediation in any case involving a challenge to the validity of an existing rule, proposed rule or an unadopted rule, or a proceeding pursuant to a petition seeking declaratory statement. This may have little impact on the effect of present law, particularly in light of the nature of the matters referenced, which constitute determinations of law that are not ordinarily amenable to mediation.

Section 9 amends s. 120.595, F.S., relating to attorney fees in APA proceedings. The bill clarifies the statute respecting participating in a proceeding for improper purposes and applying the attorney fee provisions for petitions challenging the validity of rules or unadopted rules to the defensive challenges revised in section 6 of the bill. It also makes conforming changes to the revised terminology regarding unadopted rules implemented in section 4 of the bill.

The bill provides that reasonable costs and attorney fees incurred in proving and prosecuting a claim for attorney fees under the statute are not subject to the fee cap applicable to costs and fees awardable in the underlying action.

The bill eliminates the defense that an agency's action can be “substantially justified” when a rule or unadopted rule is successfully challenged. It also eliminates a defense that the agency “did not know or should not have known” that it was relying on an unadopted rule. The bill retains an equitable defense of “special circumstances.”

The bill rewrites the provisions for notice of an invalid rule or proposed rule, or of an unadopted rule, requiring notice 30 days prior to filing of a petition challenging a rule or unadopted rule, and 5 days prior to filing the petition challenging a proposed rule. Reasonable costs and attorney fees may be awarded only for the period beginning after notice. The agency may avoid an award of attorney fees and costs if, within the notice period provided, the agency provides notice that it will not adopt the proposed rule or will not rely upon the adopted rule or statement challenged as an unadopted rule until after the agency has complied with the rulemaking procedures of the APA to ensure its rules conform to the law. The bill also provides that taking such steps to cure

its faults would constitute “special circumstances” protecting the agency from an attorney fees judgment on the rule challenge.

The bill clarifies that the notice provisions do not apply to rule challenges raised in defense to agency actions.

Section 10 alters the appellate provisions in s. 120.68, F.S., to clarify that a final order on a rule challenge is directly appealable in the same manner as a final order in a petition challenging a rule. The bill also provides that the 30 day time to file a notice of appeal is extended 10 days if the party receives notice of the final order more than 25 days after the order was rendered. This section also makes conforming technical changes resulting from other amendments in the bill.

Section 11 amends s. 120.695, F.S., relating to notices of noncompliance.

Currently, each agency must review its rules and designate those for which a violation would be minor and a notice of noncompliance the first enforcement action taken. The bill removes the discretion of cabinet agencies to opt out of this requirement by keeping licensees regularly advised of the content of governing rules. As a result, every first violation of a rule that does not cause harm or threaten the public health, safety, or welfare could only be addressed by a notice of noncompliance. This may increase litigation over what is or is not a minor violation, while reducing the revenues generated from fines for first violations of many rules.

The bill also requires each agency to review its rules by June 30, 2014, and within 3 months of any subsequent request by the rules ombudsman, and certify to the Legislature and the rules ombudsman those rules for which a violation would be considered a minor violation. Agencies that fail to do so may not impose any sanction greater than the minimum authorized by law for an initial minor violation until the certification is filed.

Beginning July 1, 2014, each agency must:

- Publish all rules for which violation would be a minor violation;
- Ensure that all investigative and enforcement personnel are knowledgeable of the agency’s “minor violation” designations; and
- For each rule filed for adoption, certify whether any part of the rule is designated as one the violation of which would be a minor violation.

The bill provides that s. 120.695, F.S., does not apply to the Department of Corrections or educational units.

Sections 12, 13, and 14 amend ss. 420.9072, 420.9075, and 443.091, F.S., respectively, to correct cross-references.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, Section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The single subject clause contains three requirements: that each law embrace only one subject, that the law may include any matter that is properly connected with the subject, and that the subject be briefly expressed in the title.³² The single subject of an act is to be derived from the short title.³³ “A connection between a provision [in an act] and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.”³⁴

The short title of this bill is “[a]n act relating to governmental procedures and legal proceedings,” and the bill contains provisions relating to rulemaking under the APA, and attorney fees under the Public Records Act. If this bill were challenged under the single subject provision of the constitution, a court would apply a highly deferential standard of review.³⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector might see some positive impact from a reduction of fines for first time violations of many rules. However, the impact upon business costs of any increase in investigations might offset any reduction in fines paid.

³² *Franklin v. State*, 887 So.2d 1063, 1072, (Fla. 2004)

³³ *Id.* at 1075.

³⁴ *Id.* at 1078.

³⁵ *Id.* at 1073.

C. Government Sector Impact:

Agencies subject to Ch. 119, F.S., which unlawfully refuse to provide public records are potentially subject to paying more in awarded attorney fees.

The bill eliminates the ability of agencies to collect fines for many first-time rule violations that do not cause harm. A reasonable estimate of this revenue has not been made.

The bill may require additional enforcement expenditures in some regulatory areas where penalties imposed for first-time violations actually deter wrongdoing.

The bill may require some additional expenditures by the Department of State to comply with additional Florida Administrative Register notice requirements. However, some of the notices the bill would require are currently being published weekly by the Department as a public convenience.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires each agency to ensure that all investigative and enforcement personnel are knowledgeable of an agency's "minor violation" designation, but does not limit that duty to the personnel of that agency. As written, it appears an agency has the duty to ensure that all investigative and enforcement personnel, wherever employed, must be made aware of the agency's designations.

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 Governmental Oversight and Accountability on April 9, 1013:

The CS:

- Expands the class of small businesses benefiting from attorney fee awards under the Equal Access to Justice Act;
- Clarifies the burden of pleading and proof of challengers and agencies in challenges to proposed and unadopted rules
- Extends the time to appeal certain final orders when notice thereof to the party appealing was delayed;
- Requires agencies to review their rules and certify those rules for which a violation would be considered a minor violation, and publish all such rules;
- Requires agencies to ensure that all investigative and enforcement personnel are knowledgeable of the agency's "minor violation" designations; and
- Requires agencies to certify whether any part of rules filed for adoption is designated as one the violation of which would be a minor violation.

B. Amendments:

None.

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
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (d) and (e) of subsection (3) of
section 57.111, Florida Statutes, are amended to read:

57.111 Civil actions and administrative proceedings
initiated by state agencies; attorney ~~attorneys'~~ fees and
costs.—

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business,



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13 including a professional practice, whose principal office is in
14 this state, who is domiciled in this state, and whose business
15 or professional practice has, at the time the action is
16 initiated by a state agency, not more than 25 full-time
17 employees or a net worth of not more than \$2 million, including
18 both personal and business investments;

19 b. A partnership or corporation, including a professional
20 practice, which has its principal office in this state and has
21 at the time the action is initiated by a state agency not more
22 than 25 full-time employees or a net worth of not more than \$2
23 million; or

24 c. An individual whose net worth did not exceed \$2 million
25 at the time the action is initiated by a state agency when the
26 action is brought against that individual's license to engage in
27 the practice or operation of a business, profession, or trade;
28 or

29 2. Any small business party as defined in subparagraph 1.,
30 without regard to the number of its employees or its net worth,
31 in any action under s. 72.011 or in any administrative
32 proceeding under that section to contest the legality of any
33 assessment of tax imposed for the sale or use of services as
34 provided in chapter 212, or interest thereon, or penalty
35 therefor; or

36 3. Any small business as defined in s. 288.703 in any
37 administrative proceeding pursuant to chapter 120 and any appeal
38 thereof.

39 (e) A proceeding is "substantially justified" if it had a
40 reasonable basis in law and fact at the time it was initiated by
41 a state agency. A proceeding is not substantially justified if



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42 the agency action involves identical or substantially similar
43 facts and circumstances and the specified law, rule, or order on
44 which the party substantially affected by the agency action
45 petitioned for a declaratory statement under s. 120.565, and:

46 1. The agency action contradicts a declaratory statement
47 issued under s. 120.565 to the substantially affected party; or

48 2. The agency denied the petition under s. 120.565 before
49 initiating the agency action against the substantially affected
50 party.

51 Section 2. Present subsections (18) through (22) of section
52 120.52, Florida Statutes, are renumbered as subsections (19)
53 through (23), respectively, and a new subsection (18) is added
54 to that section, to read:

55 120.52 Definitions.—As used in this act:

56 (18) "Small business" has the same meaning as provided in
57 s. 288.703.

58 Section 3. Section 120.55, Florida Statutes, is amended to
59 read:

60 120.55 Publication.—

61 (1) The Department of State shall:

62 (a)1. Through a continuous revision and publication system,
63 compile and publish electronically, on an Internet website
64 managed by the department, the "Florida Administrative Code."
65 The Florida Administrative Code shall contain all rules adopted
66 by each agency, citing the grant of rulemaking authority and the
67 specific law implemented pursuant to which each rule was
68 adopted, all history notes as authorized in s. 120.545(7),
69 complete indexes to all rules contained in the code, and any
70 other material required or authorized by law or deemed useful by



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71 the department. The electronic code shall display each rule
72 chapter currently in effect in browse mode and allow full text
73 search of the code and each rule chapter. The department may
74 contract with a publishing firm for a printed publication;
75 however, the department shall retain responsibility for the code
76 as provided in this section. The electronic publication shall be
77 the official compilation of the administrative rules of this
78 state. The Department of State shall retain the copyright over
79 the Florida Administrative Code.

80 2. Rules general in form but applicable to only one school
81 district, community college district, or county, or a part
82 thereof, or state university rules relating to internal
83 personnel or business and finance shall not be published in the
84 Florida Administrative Code. Exclusion from publication in the
85 Florida Administrative Code shall not affect the validity or
86 effectiveness of such rules.

87 3. At the beginning of the section of the code dealing with
88 an agency that files copies of its rules with the department,
89 the department shall publish the address and telephone number of
90 the executive offices of each agency, the manner by which the
91 agency indexes its rules, a listing of all rules of that agency
92 excluded from publication in the code, and a statement as to
93 where those rules may be inspected.

94 4. Forms shall not be published in the Florida
95 Administrative Code; but any form which an agency uses in its
96 dealings with the public, along with any accompanying
97 instructions, shall be filed with the committee before it is
98 used. Any form or instruction which meets the definition of
99 "rule" provided in s. 120.52 shall be incorporated by reference



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100 into the appropriate rule. The reference shall specifically
101 state that the form is being incorporated by reference and shall
102 include the number, title, and effective date of the form and an
103 explanation of how the form may be obtained. Each form created
104 by an agency which is incorporated by reference in a rule notice
105 of which is given under s. 120.54(3)(a) after December 31, 2007,
106 must clearly display the number, title, and effective date of
107 the form and the number of the rule in which the form is
108 incorporated.

109 5. The department shall allow adopted rules and material
110 incorporated by reference to be filed in electronic form as
111 prescribed by department rule. When a rule is filed for adoption
112 with incorporated material in electronic form, the department's
113 publication of the Florida Administrative Code on its Internet
114 website must contain a hyperlink from the incorporating
115 reference in the rule directly to that material. The department
116 may not allow hyperlinks from rules in the Florida
117 Administrative Code to any material other than that filed with
118 and maintained by the department, but may allow hyperlinks to
119 incorporated material maintained by the department from the
120 adopting agency's website or other sites.

121 (b) Electronically publish on an Internet website managed
122 by the department a continuous revision and publication entitled
123 the "Florida Administrative Register," which shall serve as the
124 official publication and must contain:

125 1. All notices required under s. 120.54(2) and (3)(a) ~~by s.~~
126 ~~120.54(3)(a)~~, showing the text of all rules proposed for
127 consideration.

128 2. All notices of public meetings, hearings, and workshops



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129 conducted in accordance with s. 120.525, including a statement
130 of the manner in which a copy of the agenda may be obtained.

131 3. A notice of each request for authorization to amend or
132 repeal an existing uniform rule or for the adoption of new
133 uniform rules.

134 4. Notice of petitions for declaratory statements or
135 administrative determinations.

136 5. A summary of each objection to any rule filed by the
137 Administrative Procedures Committee.

138 6. A listing of rules filed for adoption in the previous 7
139 calendar days.

140 7. A listing of all rules filed for adoption pending
141 legislative ratification under s. 120.541(3) until notice of
142 ratification or withdrawal of such rule is received.

143 ~~8.6.~~ Any other material required or authorized by law or
144 deemed useful by the department.

145

146 The department may contract with a publishing firm for a printed
147 publication of the Florida Administrative Register and make
148 copies available on an annual subscription basis.

149 (c) Prescribe by rule the style and form required for
150 rules, notices, and other materials submitted for filing.

151 (d) Charge each agency using the Florida Administrative
152 Register a space rate to cover the costs related to the Florida
153 Administrative Register and the Florida Administrative Code.

154 (e) Maintain a permanent record of all notices published in
155 the Florida Administrative Register.

156 (2) The Florida Administrative Register Internet website
157 must allow users to:



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158 (a) Search for notices by type, publication date, rule
159 number, word, subject, and agency.

160 (b) Search a database that makes available all notices
161 published on the website for a period of at least 5 years.

162 (c) Subscribe to an automated e-mail notification of
163 selected notices to be sent out before or concurrently with
164 publication of the electronic Florida Administrative Register.
165 Such notification must include in the text of the e-mail a
166 summary of the content of each notice.

167 (d) View agency forms and other materials submitted to the
168 department in electronic form and incorporated by reference in
169 proposed rules.

170 (e) Comment on proposed rules.

171 (3) Publication of material required by paragraph (1)(b) on
172 the Florida Administrative Register Internet website does not
173 preclude publication of such material on an agency's website or
174 by other means.

175 (4) Each agency shall provide copies of its rules upon
176 request, with citations to the grant of rulemaking authority and
177 the specific law implemented for each rule.

178 (5) Each agency that provides an e-mail alert service to
179 inform licensees or other registered recipients of important
180 notices shall use such service to notify recipients of each
181 notice required under s. 120.54(2) and (3)(a), including, but
182 not limited to, notice of rule development, notice of proposed
183 rules, and notice of filing rules for adoption, and provide
184 Internet links to the appropriate rule page on the Secretary of
185 State's website, or Internet links to an agency website that
186 contains the proposed rule or final rule.



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187 ~~(6)-(5)~~ Any publication of a proposed rule promulgated by an
188 agency, whether published in the Florida Administrative Register
189 or elsewhere, shall include, along with the rule, the name of
190 the person or persons originating such rule, the name of the
191 agency head who approved the rule, and the date upon which the
192 rule was approved.

193 ~~(7)-(6)~~ Access to the Florida Administrative Register
194 Internet website and its contents, including the e-mail
195 notification service, shall be free for the public.

196 ~~(8)-(7)~~(a) All fees and moneys collected by the Department
197 of State under this chapter shall be deposited in the Records
198 Management Trust Fund for the purpose of paying for costs
199 incurred by the department in carrying out this chapter.

200 (b) The unencumbered balance in the Records Management
201 Trust Fund for fees collected pursuant to this chapter may not
202 exceed \$300,000 at the beginning of each fiscal year, and any
203 excess shall be transferred to the General Revenue Fund.

204 Section 4. Paragraph (b) of subsection (1), paragraph (a)
205 of subsection (2), and subsection (4) of section 120.56, Florida
206 Statutes, are amended to read:

207 120.56 Challenges to rules.—

208 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
209 RULE OR A PROPOSED RULE.—

210 (b) The petition challenging the validity of a proposed or
211 adopted rule or an agency statement defined as a rule under this
212 section seeking an administrative determination must state with
213 particularity:

214 1. The provisions alleged to be invalid and a statement
215 with sufficient explanation of the facts establishing a prima



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216 facie case of ~~or grounds for the alleged~~ invalidity; and
217 2. Facts sufficient to show that the petitioner ~~person~~
218 ~~challenging a rule~~ is substantially affected by the challenged
219 adopted rule or agency statement defined as a rule ~~it,~~ or ~~that~~
220 ~~the person challenging a proposed rule~~ would be substantially
221 affected by the proposed rule ~~it~~.

222 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.-

223 (a) A substantially affected person may seek an
224 administrative determination of the invalidity of a proposed
225 rule by filing a petition seeking such a determination with the
226 division within 21 days after the date of publication of the
227 notice required by s. 120.54(3) (a); within 10 days after the
228 final public hearing is held on the proposed rule as provided by
229 s. 120.54(3) (e)2.; within 20 days after the statement of
230 estimated regulatory costs or revised statement of estimated
231 regulatory costs, if applicable, has been prepared and made
232 available as provided in s. 120.541(1) (d); or within 20 days
233 after the date of publication of the notice required by s.
234 120.54(3) (d). The petition must state with particularity the
235 objections to the proposed rule and the reasons that the
236 proposed rule is an invalid exercise of delegated legislative
237 authority. The petitioner has the burden of presenting a prima
238 facie case demonstrating the invalidity of the proposed rule
239 ~~going forward~~. The agency then has the burden to prove by a
240 preponderance of the evidence that the proposed rule is not an
241 invalid exercise of delegated legislative authority as to the
242 objections raised. ~~A person who is substantially affected by a~~
243 ~~change in the proposed rule may seek a determination of the~~
244 ~~validity of such change~~. A person who is not substantially



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245 affected by the proposed rule as initially noticed, but who is
246 substantially affected by the rule as a result of a change, may
247 challenge any provision of the resulting rule ~~and is not limited~~
248 ~~to challenging the change to the proposed rule.~~

249 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
250 RULES; SPECIAL PROVISIONS.—

251 (a) Any person substantially affected by an agency
252 statement that is an unadopted rule may seek an administrative
253 determination that the statement violates s. 120.54(1)(a). The
254 petition shall include the text of the statement or a
255 description of the statement and shall state with particularity
256 facts sufficient to show that the statement constitutes an a
257 unadopted rule ~~under s. 120.52 and that the agency has not~~
258 ~~adopted the statement by the rulemaking procedure provided by s.~~
259 120.54.

260 (b) The administrative law judge may extend the hearing
261 date beyond 30 days after assignment of the case for good cause.
262 Upon notification to the administrative law judge provided
263 before the final hearing that the agency has published a notice
264 of rulemaking under s. 120.54(3), such notice shall
265 automatically operate as a stay of proceedings pending adoption
266 of the statement as a rule. The administrative law judge may
267 vacate the stay for good cause shown. A stay of proceedings
268 pending rulemaking shall remain in effect so long as the agency
269 is proceeding expeditiously and in good faith to adopt the
270 statement as a rule. ~~If a hearing is held and the petitioner~~
271 ~~proves the allegations of the petition, the agency shall have~~
272 ~~the burden of proving~~

273 (c) The petitioner has the burden of presenting a prima



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274 facie case demonstrating that the agency statement constitutes
275 an unadopted rule. The agency then has the burden to prove by a
276 preponderance of the evidence that the statement does not meet
277 the definition of an unadopted rule, that the statement was
278 adopted as a rule in compliance with s. 120.54, or that
279 rulemaking is not feasible or not practicable under s.
280 120.54(1) (a).

281 (d)~~(e)~~ The administrative law judge may determine whether
282 all or part of a statement violates s. 120.54(1) (a). The
283 decision of the administrative law judge shall constitute a
284 final order. The division shall transmit a copy of the final
285 order to the Department of State and the committee. The
286 Department of State shall publish notice of the final order in
287 the first available issue of the Florida Administrative Weekly.

288 (e)~~(d)~~ If an administrative law judge enters a final order
289 that all or part of an unadopted rule ~~agency statement~~ violates
290 s. 120.54(1) (a), the agency must immediately discontinue all
291 reliance upon the unadopted rule ~~statement~~ or any substantially
292 similar statement as a basis for agency action.

293 (f)~~(e)~~ If proposed rules addressing the challenged
294 unadopted rule ~~statement~~ are determined to be an invalid
295 exercise of delegated legislative authority as defined in s.
296 120.52(8) (b)-(f), the agency must immediately discontinue
297 reliance on the unadopted rule ~~statement~~ and any substantially
298 similar statement until rules addressing the subject are
299 properly adopted, and the administrative law judge shall enter a
300 final order to that effect.

301 (g)~~(f)~~ All proceedings to determine a violation of s.
302 120.54(1) (a) shall be brought pursuant to this subsection. A



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303 proceeding pursuant to this subsection may be consolidated with
304 a proceeding under subsection (3) or under any other section of
305 this chapter. This paragraph does not prevent a party whose
306 substantial interests have been determined by an agency action
307 from bringing a proceeding pursuant to s. 120.57(1)(e).

308 Section 5. Paragraph (1) of subsection (2) of section
309 120.569, Florida Statutes, is amended to read:

310 120.569 Decisions which affect substantial interests.—

311 (2)

312 (1) Unless the time period is waived or extended with the
313 consent of all parties, the final order in a proceeding which
314 affects substantial interests must be in writing and include
315 findings of fact, if any, and conclusions of law separately
316 stated, and it must be rendered within 90 days:

317 1. After the hearing is concluded, if conducted by the
318 agency;

319 2. After a recommended order is submitted to the agency and
320 mailed to all parties, if the hearing is conducted by an
321 administrative law judge; provided that, at the election of the
322 agency, the time for rendering the final order may be extended
323 until 10 days after entry of final judgment on any appeal from a
324 final order under s. 120.57(1)(e)5.; or

325 3. After the agency has received the written and oral
326 material it has authorized to be submitted, if there has been no
327 hearing.

328 Section 6. Paragraphs (e) and (h) of subsection (1) and
329 subsection (2) of section 120.57, Florida Statutes, are amended
330 to read:

331 120.57 Additional procedures for particular cases.—



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332 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
333 DISPUTED ISSUES OF MATERIAL FACT.—

334 (e)1. An agency or an administrative law judge may not base
335 agency action that determines the substantial interests of a
336 party on an unadopted rule or a rule that is an invalid exercise
337 of delegated legislative authority. ~~The administrative law judge~~
338 ~~shall determine whether an agency statement constitutes an~~
339 ~~unadopted rule.~~ This subparagraph does not preclude application
340 of valid adopted rules and applicable provisions of law to the
341 facts.

342 2. In a matter initiated by agency action proposing to
343 determine the substantive interests of a party, the party's
344 timely petition for hearing may challenge the proposed agency
345 action as based on a rule that is an invalid exercise of
346 delegated legislative authority or based on an unadopted rule.
347 For challenges brought under this subsection:

348 a. The challenge shall be pled as a defense with the
349 particularity required in s. 120.56(1)(b).

350 b. Section 120.56(3)(a) applies to a challenge alleging a
351 rule is an invalid exercise of delegated legislative authority.

352 c. Section 120.56(4)(c) applies to a challenge alleging an
353 unadopted rule.

354 d. The agency shall have 15 days from the date of receiving
355 a challenge under this paragraph to serve the challenging party
356 with a notice that the agency will continue to rely upon the
357 rule or the alleged unadopted rule as a basis for the action
358 determining the party's substantive interests. Failure to timely
359 serve the notice shall constitute a binding stipulation that the
360 agency shall not rely upon the rule or unadopted rule further in



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361 the proceeding. The agency shall include a copy of this notice
362 with the referral of the matter to the division under s.
363 120.569(2) (a).

364 e. This subparagraph does not preclude the consolidation of
365 any proceeding under s. 120.56 with any proceeding under this
366 paragraph.

367 3.2- Notwithstanding subparagraph 1., if an agency
368 demonstrates that the statute being implemented directs it to
369 adopt rules, that the agency has not had time to adopt those
370 rules because the requirement was so recently enacted, and that
371 the agency has initiated rulemaking and is proceeding
372 expeditiously and in good faith to adopt the required rules,
373 then the agency's action may be based upon those unadopted rules
374 if, subject to de novo review by the administrative law judge
375 determines rulemaking is neither feasible nor practicable and
376 the unadopted rules would not constitute an invalid exercise of
377 delegated legislative authority if adopted as rules. An

378 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
379 ~~invalid~~. The agency must demonstrate that the unadopted rule:

380 a. Is within the powers, functions, and duties delegated by
381 the Legislature or, if the agency is operating pursuant to
382 authority vested in the agency by ~~derived from~~ the State
383 Constitution, is within that authority;

384 b. Does not enlarge, modify, or contravene the specific
385 provisions of law implemented;

386 c. Is not vague, establishes adequate standards for agency
387 decisions, or does not vest unbridled discretion in the agency;

388 d. Is not arbitrary or capricious. A rule is arbitrary if
389 it is not supported by logic or the necessary facts; a rule is



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390 capricious if it is adopted without thought or reason or is
391 irrational;

392 e. Is not being applied to the substantially affected party
393 without due notice; and

394 f. Does not impose excessive regulatory costs on the
395 regulated person, county, or city.

396 4. The administrative law judge shall determine under
397 subparagraph 2. whether a rule is an invalid exercise of
398 delegated legislative authority or an agency statement
399 constitutes an unadopted rule and shall determine whether an
400 unadopted rule meets the requirements of subparagraph 3. The
401 determination shall be rendered as a separate final order no
402 earlier than the date on which the administrative law judge
403 serves the recommended order.

404 ~~5.3.~~ The recommended and final orders in any proceeding
405 shall be governed by the provisions of paragraphs (k) and (l),
406 except that the administrative law judge's determination
407 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
408 ~~subparagraph 2. shall be included as a conclusion of law that~~
409 ~~the agency may not reject not be rejected by the agency unless~~
410 ~~the agency first determines from a review of the complete~~
411 ~~record, and states with particularity in the order, that such~~
412 ~~determination is clearly erroneous or does not comply with~~
413 ~~essential requirements of law. In any proceeding for review~~
414 ~~under s. 120.68, if the court finds that the agency's rejection~~
415 ~~of the determination regarding the unadopted rule does not~~
416 ~~comport with the provisions of this subparagraph, the agency~~
417 ~~action shall be set aside and the court shall award to the~~
418 ~~prevailing party the reasonable costs and a reasonable~~



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419 ~~attorney's fee for the initial proceeding and the proceeding for~~
420 ~~review.~~

421 (h) Any party to a proceeding in which an administrative
422 law judge of the Division of Administrative Hearings has final
423 order authority may move for a summary final order when there is
424 no genuine issue as to any material fact. A summary final order
425 shall be rendered if the administrative law judge determines
426 from the pleadings, depositions, answers to interrogatories, and
427 admissions on file, together with affidavits, if any, that no
428 genuine issue as to any material fact exists and that the moving
429 party is entitled as a matter of law to the entry of a final
430 order. A summary final order shall consist of findings of fact,
431 if any, conclusions of law, a disposition or penalty, if
432 applicable, and any other information required by law to be
433 contained in the final order. This paragraph does not apply to
434 proceedings authorized under paragraph (e).

435 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT
436 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which
437 subsection (1) does not apply:

438 (a) The agency shall:

439 1. Give reasonable notice to affected persons of the action
440 of the agency, whether proposed or already taken, or of its
441 decision to refuse action, together with a summary of the
442 factual, legal, and policy grounds therefor.

443 2. Give parties or their counsel the option, at a
444 convenient time and place, to present to the agency or hearing
445 officer written or oral evidence in opposition to the action of
446 the agency or to its refusal to act, or a written statement
447 challenging the grounds upon which the agency has chosen to



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448 justify its action or inaction.

449 3. If the objections of the parties are overruled, provide
450 a written explanation within 7 days.

451 (b) An agency may not base agency action that determines
452 the substantial interests of a party on an unadopted rule or a
453 rule that is an invalid exercise of delegated legislative
454 authority. No later than the date provided by the agency under
455 subparagraph (a)2. for presenting material in opposition to the
456 agency's proposed action or refusal to act, the party may file a
457 petition under s. 120.56 challenging the rule, portion of rule,
458 or unadopted rule on which the agency bases its proposed action
459 or refusal to act. The filing of a challenge under s. 120.56
460 pursuant to this paragraph shall stay all proceedings on the
461 agency's proposed action or refusal to act until entry of the
462 final order by the administrative law judge, which shall provide
463 additional notice that the stay of the pending agency action is
464 terminated and any further stay pending appeal of the final
465 order must be sought from the appellate court.

466 (c) ~~(b)~~ The record shall only consist of:

467 1. The notice and summary of grounds.

468 2. Evidence received.

469 3. All written statements submitted.

470 4. Any decision overruling objections.

471 5. All matters placed on the record after an ex parte
472 communication.

473 6. The official transcript.

474 7. Any decision, opinion, order, or report by the presiding
475 officer.

476 Section 7. Section 120.573, Florida Statutes, is amended to



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477 read:

478 120.573 Mediation of disputes.—

479 (1) Each announcement of an agency action that affects
480 substantial interests shall advise whether mediation of the
481 administrative dispute for the type of agency action announced
482 is available and that choosing mediation does not affect the
483 right to an administrative hearing. If the agency and all
484 parties to the administrative action agree to mediation, in
485 writing, within 10 days after the time period stated in the
486 announcement for election of an administrative remedy under ss.
487 120.569 and 120.57, the time limitations imposed by ss. 120.569
488 and 120.57 shall be tolled to allow the agency and parties to
489 mediate the administrative dispute. The mediation shall be
490 concluded within 60 days of such agreement unless otherwise
491 agreed by the parties. The mediation agreement shall include
492 provisions for mediator selection, the allocation of costs and
493 fees associated with mediation, and the mediating parties'
494 understanding regarding the confidentiality of discussions and
495 documents introduced during mediation. If mediation results in
496 settlement of the administrative dispute, the agency shall enter
497 a final order incorporating the agreement of the parties. If
498 mediation terminates without settlement of the dispute, the
499 agency shall notify the parties in writing that the
500 administrative hearing processes under ss. 120.569 and 120.57
501 are resumed.

502 (2) Any party to a proceeding conducted pursuant to a
503 petition seeking an administrative determination of the
504 invalidity of an existing rule, proposed rule, or unadopted
505 agency statement under s. 120.56 or a proceeding conducted



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506 pursuant to a petition seeking a declaratory statement under s.
507 120.565 may request mediation of the dispute under this section.

508 Section 8. Section 120.595, Florida Statutes, is amended to
509 read:

510 120.595 Attorney ~~Attorney's~~ fees.—

511 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
512 120.57(1).—

513 (a) The provisions of this subsection are supplemental to,
514 and do not abrogate, other provisions allowing the award of fees
515 or costs in administrative proceedings.

516 (b) The final order in a proceeding pursuant to s.
517 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney
518 fees ~~attorney's fee~~ to the prevailing party if the
519 administrative law judge determines only where the nonprevailing
520 adverse party ~~has been determined by the administrative law~~
521 ~~judge to have~~ participated in the proceeding for an improper
522 purpose.

523 1.(e) Other than as provided in paragraph (d), in
524 proceedings pursuant to s. 120.57(1), and upon motion, the
525 administrative law judge shall determine whether any party
526 participated in the proceeding for an improper purpose as
527 defined by this subsection. ~~In making such determination, the~~
528 ~~administrative law judge shall consider whether~~ The
529 nonprevailing adverse party shall be presumed to have
530 participated in the pending proceeding for an improper purpose
531 if:

532 a. Such party was an adverse party ~~has participated~~ in two
533 or more other such proceedings involving the same prevailing
534 party and the same subject; ~~project as an adverse party and in~~



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535 b. In those ~~which such two or more~~ proceedings the
536 nonprevailing adverse party did not establish either the factual
537 or legal merits of its position; ~~and shall consider~~

538 c. Whether The factual or legal position asserted in the
539 pending instant proceeding would have been cognizable in the
540 previous proceedings; and. ~~In such event, it shall be rebuttably~~
541 ~~presumed that the nonprevailing adverse party participated in~~
542 ~~the pending proceeding for an improper purpose~~

543 d. The nonprevailing adverse party has not rebutted the
544 presumption of participating in the pending proceeding for an
545 improper purpose.

546 2.(d) If In any proceeding in which the administrative law
547 judge determines that a party is determined to have participated
548 in the proceeding for an improper purpose, the recommended order
549 shall include such findings of fact and conclusions of law to
550 establish the conclusion ~~so designate~~ and shall determine the
551 award of costs and attorney ~~attorney's~~ fees.

552 (c)(e) For the purpose of this subsection:

553 1. "Improper purpose" means participation in a proceeding
554 pursuant to s. 120.57(1) primarily to harass or to cause
555 unnecessary delay or for frivolous purpose or to needlessly
556 increase the cost of litigation, licensing, or securing the
557 approval of an activity.

558 2. "Costs" has the same meaning as the costs allowed in
559 civil actions in this state as provided in chapter 57.

560 3. "Nonprevailing adverse party" means a party that has
561 failed to have substantially changed the outcome of the proposed
562 or final agency action which is the subject of a proceeding. In
563 the event that a proceeding results in any substantial



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564 modification or condition intended to resolve the matters raised
565 in a party's petition, it shall be determined that the party
566 having raised the issue addressed is not a nonprevailing adverse
567 party. The recommended order shall state whether the change is
568 substantial for purposes of this subsection. In no event shall
569 the term "nonprevailing party" or "prevailing party" be deemed
570 to include any party that has intervened in a previously
571 existing proceeding to support the position of an agency.

572 (d) For challenges brought under s. 120.57(1)(e), if the
573 appellate court or the administrative law judge declares a rule
574 or portion of a rule to be invalid or that the agency statement
575 is an unadopted rule which does not meet the requirements of s.
576 120.57(1)(e)4., a judgment or order shall be rendered against
577 the agency for reasonable costs and reasonable attorney fees,
578 unless the agency demonstrates that special circumstances exist
579 which would make the award unjust. Reasonable costs and
580 reasonable attorney fees shall be awarded only for the period
581 beginning 15 days after the receipt of the petition for hearing
582 challenging the rule or unadopted rule. If the agency prevails
583 in the proceedings, the appellate court or administrative law
584 judge shall award reasonable costs and reasonable attorney fees
585 against a party if the appellate court or administrative law
586 judge determines that a party participated in the proceedings
587 for an improper purpose as defined by paragraph (c). An award of
588 attorney fees as provided by this subsection may not exceed
589 \$50,000.

590 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
591 120.56(2).—If the appellate court or administrative law judge
592 declares a proposed rule or portion of a proposed rule invalid



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593 pursuant to s. 120.56(2), a judgment or order shall be rendered
594 against the agency for reasonable costs and reasonable attorney
595 attorney's fees, unless the agency demonstrates ~~that its actions~~
596 ~~were substantially justified or~~ special circumstances exist
597 which would make the award unjust. ~~An agency's actions are~~
598 ~~"substantially justified" if there was a reasonable basis in law~~
599 ~~and fact at the time the actions were taken by the agency.~~ If
600 the agency prevails in the proceedings, the appellate court or
601 administrative law judge shall award reasonable costs and
602 reasonable attorney attorney's fees against a party if the
603 appellate court or administrative law judge determines that a
604 party participated in the proceedings for an improper purpose as
605 defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~ award of attorney
606 attorney's fees as provided by this subsection may not ~~shall~~
607 exceed \$50,000.

608 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
609 120.56(3) AND (5).-If the appellate court or administrative law
610 judge declares a rule or portion of a rule invalid pursuant to
611 s. 120.56(3) or (5), a judgment or order shall be rendered
612 against the agency for reasonable costs and reasonable attorney
613 attorney's fees, unless the agency demonstrates that ~~its actions~~
614 ~~were substantially justified or~~ special circumstances exist
615 which would make the award unjust. ~~An agency's actions are~~
616 ~~"substantially justified" if there was a reasonable basis in law~~
617 ~~and fact at the time the actions were taken by the agency.~~ If
618 the agency prevails in the proceedings, the appellate court or
619 administrative law judge shall award reasonable costs and
620 reasonable attorney attorney's fees against a party if the
621 appellate court or administrative law judge determines that a



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622 party participated in the proceedings for an improper purpose as
623 defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~ award of attorney
624 ~~attorney's~~ fees as provided by this subsection may not ~~shall~~
625 exceed \$50,000.

626 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO
627 SECTION 120.56(4).—

628 (a) If the appellate court or administrative law judge
629 determines that all or part of an unadopted rule ~~agency~~
630 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
631 immediately discontinue reliance on the unadopted rule ~~statement~~
632 and any substantially similar statement pursuant to s.
633 120.56(4)(e), a judgment or order shall be entered against the
634 agency for reasonable costs and reasonable attorney ~~attorney's~~
635 fees, unless the agency demonstrates that the statement is
636 required by the Federal Government to implement or retain a
637 delegated or approved program or to meet a condition to receipt
638 of federal funds.

639 (b) Upon notification to the administrative law judge
640 provided before the final hearing that the agency has published
641 a notice of rulemaking under s. 120.54(3)(a), such notice shall
642 automatically operate as a stay of proceedings pending
643 rulemaking. The administrative law judge may vacate the stay for
644 good cause shown. A stay of proceedings under this paragraph
645 remains in effect so long as the agency is proceeding
646 expeditiously and in good faith to adopt the statement as a
647 rule. The administrative law judge shall award reasonable costs
648 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
649 petitioner before ~~prior to~~ the date the notice was published,
650 ~~unless the agency proves to the administrative law judge that it~~



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651 ~~did not know and should not have known that the statement was an~~
652 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
653 ~~and paragraph (a) shall be awarded only upon a finding that the~~
654 ~~agency received notice that the statement may constitute an~~
655 ~~unadopted rule at least 30 days before a petition under s.~~
656 ~~120.56(4) was filed and that the agency failed to publish the~~
657 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
658 ~~addresses the statement within that 30-day period. Notice to the~~
659 ~~agency may be satisfied by its receipt of a copy of the s.~~
660 ~~120.56(4) petition, a notice or other paper containing~~
661 ~~substantially the same information, or a petition filed pursuant~~
662 ~~to s. 120.54(7). An award of attorney ~~attorney's~~ fees as~~
663 ~~provided by this paragraph may not exceed \$50,000.~~

664 (c) Notwithstanding the provisions of chapter 284, an award
665 shall be paid from the budget entity of the secretary, executive
666 director, or equivalent administrative officer of the agency,
667 and the agency is ~~shall~~ not be entitled to payment of an award
668 or reimbursement for payment of an award under any provision of
669 law.

670 (d) If the agency prevails in the proceedings, the
671 appellate court or administrative law judge shall award
672 reasonable costs and attorney ~~attorney's~~ fees against a party if
673 the appellate court or administrative law judge determines that
674 the party participated in the proceedings for an improper
675 purpose as defined in paragraph (1) (c) ~~(e)~~ or that the party or
676 the party's attorney knew or should have known that a claim was
677 not supported by the material facts necessary to establish the
678 claim or would not be supported by the application of then-
679 existing law to those material facts.



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680 (5) APPEALS.—When there is an appeal, the court in its
681 discretion may award reasonable attorney ~~attorney's~~ fees and
682 reasonable costs to the prevailing party if the court finds that
683 the appeal was frivolous, meritless, or an abuse of the
684 appellate process, or that the agency action which precipitated
685 the appeal was a gross abuse of the agency's discretion. Upon
686 review of agency action that precipitates an appeal, if the
687 court finds that the agency improperly rejected or modified
688 findings of fact in a recommended order, the court shall award
689 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
690 prevailing appellant for the administrative proceeding and the
691 appellate proceeding.

692 (6) NOTICE OF INVALIDITY.—A party failing to serve a notice
693 of invalidity under this subsection is not entitled to an award
694 of reasonable costs and reasonable attorney fees under this
695 section except as provided in paragraph (d).

696 (a) Before filing a petition challenging the validity of a
697 proposed rule under s. 120.56(2), an adopted rule under s.
698 120.56(3), or an agency statement defined as an unadopted rule
699 under s. 120.56(4), the substantially affected person shall
700 serve the agency head with notice of the proposed challenge. The
701 notice shall identify the proposed or adopted rule or the
702 unadopted rule the person proposes to challenge and a brief
703 explanation of the basis for that challenge. The notice must be
704 received by the agency head at least 5 days before the filing of
705 a petition under s. 120.56(2), and at least 30 days before the
706 filing of a petition under s. 120.56(3) or s. 120.56(4).

707 (b) Reasonable costs and reasonable attorney fees shall be
708 awarded only for the period beginning after the date on which



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709 the agency head receives the notice of invalidity under
710 paragraph (a).

711 (c) Within the time limits specified in paragraph (a), if
712 the agency provides the substantially affected person with
713 written notice that the agency will not adopt the proposed rule
714 or will not rely upon the adopted rule or the agency statement
715 defined as an unadopted rule until after the agency has complied
716 with the requirements of s. 120.54 to amend the proposed rule or
717 the adopted rule or adopt the unadopted rule, such written
718 notice shall constitute a special circumstance under this
719 section.

720 (d) This subsection does not apply to defenses raised and
721 challenges authorized by s. 120.57(1) (e) or s. 120.57(2) (b).

722 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
723 purposes of this chapter, s. 57.105(5), and s. 57.111, in
724 addition to an award of attorney fees and costs, the prevailing
725 party shall also recover attorney fees and costs incurred in
726 litigating entitlement to, and the determination or
727 quantification of, attorney fees and costs for the underlying
728 matter. Attorney fees and costs awarded for litigating
729 entitlement to, and the determination or quantification of,
730 attorney fees and costs for the underlying matter are not
731 subject to the limitations on amounts provided in this chapter
732 or s. 57.111.

733 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
734 including ss. 57.105 and 57.111, authorize the award of attorney
735 ~~attorney's~~ fees and costs in administrative proceedings. Nothing
736 in this section shall affect the availability of attorney
737 ~~attorney's~~ fees and costs as provided in those sections.



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738 Section 9. Subsections (1), (2), and (9) of section 120.68,
739 Florida Statutes, are amended to read:

740 120.68 Judicial review.—

741 (1) (a) A party who is adversely affected by final agency
742 action is entitled to judicial review.

743 (b) A preliminary, procedural, or intermediate order of the
744 agency or of an administrative law judge of the Division of
745 Administrative Hearings, or a final order under s.
746 120.57(1)(e)4., is immediately reviewable if review of the final
747 agency decision would not provide an adequate remedy.

748 (2) (a) Judicial review shall be sought in the appellate
749 district where the agency maintains its headquarters or where a
750 party resides or as otherwise provided by law.

751 (b) All proceedings shall be instituted by filing a notice
752 of appeal or petition for review in accordance with the Florida
753 Rules of Appellate Procedure within 30 days after the date that
754 rendition of the order being appealed was filed with the agency
755 clerk. Such time is hereby extended for any party 10 days from
756 receipt by such party of the notice of the order, if such notice
757 is received after the 25th day from the filing of the order. If
758 the appeal is of an order rendered in a proceeding initiated
759 under s. 120.56, or a final order under s. 120.57(1)(e)4., the
760 agency whose rule is being challenged shall transmit a copy of
761 the notice of appeal to the committee.

762 (c) ~~(b)~~ When proceedings under this chapter are consolidated
763 for final hearing and the parties to the consolidated proceeding
764 seek review of final or interlocutory orders in more than one
765 district court of appeal, the courts of appeal are authorized to
766 transfer and consolidate the review proceedings. The court may



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767 transfer such appellate proceedings on its own motion, upon
768 motion of a party to one of the appellate proceedings, or by
769 stipulation of the parties to the appellate proceedings. In
770 determining whether to transfer a proceeding, the court may
771 consider such factors as the interrelationship of the parties
772 and the proceedings, the desirability of avoiding inconsistent
773 results in related matters, judicial economy, and the burden on
774 the parties of reproducing the record for use in multiple
775 appellate courts.

776 (9) No petition challenging an agency rule as an invalid
777 exercise of delegated legislative authority shall be instituted
778 pursuant to this section, except to review an order entered
779 pursuant to a proceeding under s. 120.56, under s.
780 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
781 findings of immediate danger, necessity, and procedural fairness
782 prerequisite to the adoption of an emergency rule pursuant to s.
783 120.54(4), unless the sole issue presented by the petition is
784 the constitutionality of a rule and there are no disputed issues
785 of fact.

786 Section 10. Subsection (2) of section 120.695, Florida
787 Statutes, is amended to read:

788 120.695 Notice of noncompliance.—

789 (2)(a) Each agency shall issue a notice of noncompliance as
790 a first response to a minor violation of a rule. A "notice of
791 noncompliance" is a notification by the agency charged with
792 enforcing the rule issued to the person or business subject to
793 the rule. A notice of noncompliance may not be accompanied with
794 a fine or other disciplinary penalty. It must identify the
795 specific rule that is being violated, provide information on how



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796 to comply with the rule, and specify a reasonable time for the
797 violator to comply with the rule. A rule is agency action that
798 regulates a business, occupation, or profession, or regulates a
799 person operating a business, occupation, or profession, and
800 that, if not complied with, may result in a disciplinary
801 penalty.

802 ~~(b) Each agency shall review all of its rules and designate~~
803 ~~those for which~~ A violation would be a minor violation and for
804 which a notice of noncompliance must be the first enforcement
805 action taken against a person or business subject to regulation.
806 ~~A violation of a rule is a minor violation~~ if it does not result
807 in economic or physical harm to a person or adversely affect the
808 public health, safety, or welfare or create a significant threat
809 of such harm. ~~If an agency under the direction of a cabinet~~
810 ~~officer mails to each licensee a notice of the designated rules~~
811 ~~at the time of licensure and at least annually thereafter, the~~
812 ~~provisions of paragraph (a) may be exercised at the discretion~~
813 ~~of the agency. Such notice shall include a subject-matter index~~
814 ~~of the rules and information on how the rules may be obtained.~~

815 ~~(c) The agency's review and designation must be completed~~
816 ~~by December 1, 1995; each agency under the direction of the~~
817 ~~Governor shall make a report to the Governor, and each agency~~
818 ~~under the joint direction of the Governor and Cabinet shall~~
819 ~~report to the Governor and Cabinet by January 1, 1996, on which~~
820 ~~of its rules have been designated as rules the violation of~~
821 ~~which would be a minor violation.~~

822 ~~(d) The Governor or the Governor and Cabinet, as~~
823 ~~appropriate pursuant to paragraph (c), may evaluate the review~~
824 ~~and designation effects of each agency and may apply a different~~



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825 ~~designation than that applied by the agency.~~

826 ~~(c)(e)~~ This section does not apply to the regulation of law
827 enforcement personnel or teachers.

828 ~~(f) Designation pursuant to this section is not subject to~~
829 ~~challenge under this chapter.~~

830 Section 11. Paragraph (a) of subsection (1) of section
831 420.9072, Florida Statutes, is amended to read:

832 420.9072 State Housing Initiatives Partnership Program.—The
833 State Housing Initiatives Partnership Program is created for the
834 purpose of providing funds to counties and eligible
835 municipalities as an incentive for the creation of local housing
836 partnerships, to expand production of and preserve affordable
837 housing, to further the housing element of the local government
838 comprehensive plan specific to affordable housing, and to
839 increase housing-related employment.

840 (1)(a) In addition to the legislative findings set forth in
841 s. 420.6015, the Legislature finds that affordable housing is
842 most effectively provided by combining available public and
843 private resources to conserve and improve existing housing and
844 provide new housing for very-low-income households, low-income
845 households, and moderate-income households. The Legislature
846 intends to encourage partnerships in order to secure the
847 benefits of cooperation by the public and private sectors and to
848 reduce the cost of housing for the target group by effectively
849 combining all available resources and cost-saving measures. The
850 Legislature further intends that local governments achieve this
851 combination of resources by encouraging active partnerships
852 between government, lenders, builders and developers, real
853 estate professionals, advocates for low-income persons, and



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854 community groups to produce affordable housing and provide
855 related services. Extending the partnership concept to encompass
856 cooperative efforts among small counties as defined in s. 120.52
857 ~~120.52(19)~~, and among counties and municipalities is
858 specifically encouraged. Local governments are also intended to
859 establish an affordable housing advisory committee to recommend
860 monetary and nonmonetary incentives for affordable housing as
861 provided in s. 420.9076.

862 Section 12. Subsection (7) of section 420.9075, Florida
863 Statutes, is amended to read:

864 420.9075 Local housing assistance plans; partnerships.—

865 (7) The moneys deposited in the local housing assistance
866 trust fund shall be used to administer and implement the local
867 housing assistance plan. The cost of administering the plan may
868 not exceed 5 percent of the local housing distribution moneys
869 and program income deposited into the trust fund. A county or an
870 eligible municipality may not exceed the 5-percent limitation on
871 administrative costs, unless its governing body finds, by
872 resolution, that 5 percent of the local housing distribution
873 plus 5 percent of program income is insufficient to adequately
874 pay the necessary costs of administering the local housing
875 assistance plan. The cost of administering the program may not
876 exceed 10 percent of the local housing distribution plus 5
877 percent of program income deposited into the trust fund, except
878 that small counties, as defined in s. 120.52 ~~120.52(19)~~, and
879 eligible municipalities receiving a local housing distribution
880 of up to \$350,000 may use up to 10 percent of program income for
881 administrative costs.

882 Section 13. Paragraph (d) of subsection (1) of section



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883 443.091, Florida Statutes, is amended to read:

884 443.091 Benefit eligibility conditions.—

885 (1) An unemployed individual is eligible to receive
886 benefits for any week only if the Department of Economic
887 Opportunity finds that:

888 (d) She or he is able to work and is available for work. In
889 order to assess eligibility for a claimed week of unemployment,
890 the department shall develop criteria to determine a claimant's
891 ability to work and availability for work. A claimant must be
892 actively seeking work in order to be considered available for
893 work. This means engaging in systematic and sustained efforts to
894 find work, including contacting at least five prospective
895 employers for each week of unemployment claimed. The department
896 may require the claimant to provide proof of such efforts to the
897 one-stop career center as part of reemployment services. The
898 department shall conduct random reviews of work search
899 information provided by claimants. As an alternative to
900 contacting at least five prospective employers for any week of
901 unemployment claimed, a claimant may, for that same week, report
902 in person to a one-stop career center to meet with a
903 representative of the center and access reemployment services of
904 the center. The center shall keep a record of the services or
905 information provided to the claimant and shall provide the
906 records to the department upon request by the department.

907 However:

908 1. Notwithstanding any other provision of this paragraph or
909 paragraphs (b) and (e), an otherwise eligible individual may not
910 be denied benefits for any week because she or he is in training
911 with the approval of the department, or by reason of s.



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912 443.101(2) relating to failure to apply for, or refusal to
913 accept, suitable work. Training may be approved by the
914 department in accordance with criteria prescribed by rule. A
915 claimant's eligibility during approved training is contingent
916 upon satisfying eligibility conditions prescribed by rule.

917 2. Notwithstanding any other provision of this chapter, an
918 otherwise eligible individual who is in training approved under
919 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
920 determined ineligible or disqualified for benefits due to
921 enrollment in such training or because of leaving work that is
922 not suitable employment to enter such training. As used in this
923 subparagraph, the term "suitable employment" means work of a
924 substantially equal or higher skill level than the worker's past
925 adversely affected employment, as defined for purposes of the
926 Trade Act of 1974, as amended, the wages for which are at least
927 80 percent of the worker's average weekly wage as determined for
928 purposes of the Trade Act of 1974, as amended.

929 3. Notwithstanding any other provision of this section, an
930 otherwise eligible individual may not be denied benefits for any
931 week because she or he is before any state or federal court
932 pursuant to a lawfully issued summons to appear for jury duty.

933 4. Union members who customarily obtain employment through
934 a union hiring hall may satisfy the work search requirements of
935 this paragraph by reporting daily to their union hall.

936 5. The work search requirements of this paragraph do not
937 apply to persons who are unemployed as a result of a temporary
938 layoff or who are claiming benefits under an approved short-time
939 compensation plan as provided in s. 443.1116.

940 6. In small counties as defined in s. 120.52 ~~120.52(19)~~, a



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941 claimant engaging in systematic and sustained efforts to find
942 work must contact at least three prospective employers for each
943 week of unemployment claimed.

944 Section 14. This act shall take effect July 1, 2013.

945

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

947 And the title is amended as follows:

948 Delete everything before the enacting clause
949 and insert:

950 A bill to be entitled
951 An act relating to administrative procedures; amending
952 s. 57.111, F.S.; revising the definition of the term
953 "small business party"; providing conditions under
954 which a proceeding is not substantially justified for
955 purposes of an award under the Florida Equal Access to
956 Justice Act; amending s. 120.52, F.S.; defining the
957 term "small business" as used in the Administrative
958 Procedure Act; amending s. 120.55, F.S.; providing for
959 publication of notices of rule development and of
960 rules filed for adoption; providing additional notice
961 of rule development, proposals, and adoptions;
962 amending s. 120.56, F.S.; providing that the
963 petitioner challenging a proposed rule or unadopted
964 agency statement has the burden of establishing a
965 prima facie case; amending s. 120.569, F.S.; providing
966 for extension of time to render final agency action in
967 certain circumstances; amending s. 120.57, F.S.;
968 conforming proceedings opposing agency action based on
969 an invalid rule or unadopted rule to proceedings for



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970 challenging rules; requiring notice of whether the
971 agency will rely on the challenged rule or unadopted
972 rule; providing for the administrative law judge to
973 make certain findings and enter a final order on the
974 validity of the rule or the use of an unadopted rule;
975 providing for stay of proceedings not involving
976 disputed issues of fact upon timely filing of rule
977 challenge; amending s. 120.573, F.S.; authorizing any
978 party to request mediation of rule challenge and
979 declaratory statement proceedings; amending s.
980 120.595, F.S.; providing for an award of attorney fees
981 and costs in specified challenges to agency action;
982 removing certain exceptions from requirements that
983 attorney fees and costs be rendered against the agency
984 in proceedings in which the petitioner prevails in a
985 rule challenge; requiring service of notice of
986 invalidity to an agency before bringing a rule
987 challenge as a condition precedent to award of
988 attorney fees and costs; providing for award of
989 additional attorney fees and costs for litigating
990 entitlement to and amount of attorney fees and costs
991 in administrative actions; providing that such awards
992 of additional attorney fees and costs are not subject
993 to certain statutory limits; amending s. 120.68, F.S.;
994 providing for appellate review of orders rendered in
995 challenges to specified rules or unadopted rules;
996 amending s. 120.695, F.S.; removing obsolete
997 provisions with respect to required agency review and
998 designation of minor violations; amending ss.



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999
1000

420.9072, 420.9075, and 443.091, F.S.; conforming
cross-references; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (681624) (with title amendment)

Between lines 50 and 51
insert:

Section 2. Section 119.12, Florida Statutes, is amended to read:

119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the



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13 reasonable costs of enforcement. The reasonable costs of
14 enforcement include, but are not limited to, including
15 reasonable attorney attorneys' fees, including those reasonable
16 attorney fees incurred in litigating entitlement to, and the
17 determination or quantification of, attorney fees for the
18 underlying matter.

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 lines 951 - 956

23 and insert:

24 An act relating to governmental procedures and legal
25 proceedings; amending s. 57.111, F.S.; revising the
26 definition of the term "small business party";
27 providing conditions under which a proceeding is not
28 substantially justified for purposes of an award under
29 the Florida Equal Access to Justice Act; amending s.
30 119.12, F.S.; specifying what constitutes reasonable
31 costs of enforcement in a civil action against an
32 agency to enforce ch. 119, F.S.; amending s. 120.52,
33 F.S.; defining the



218922

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (681624) (with title**
2 **amendment)**

3
4 Delete lines 786 - 829

5 and insert:

6 Section 10. Section 120.695, Florida Statutes, is amended
7 to read:

8 120.695 Notice of noncompliance.-

9 (1) It is the policy of the state that the purpose of
10 regulation is to protect the public by attaining compliance with
11 the policies established by the Legislature. Fines and other
12 penalties may be provided in order to assure compliance;



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13 however, the collection of fines and the imposition of penalties
14 are intended to be secondary to the primary goal of attaining
15 compliance with an agency's rules. It is the intent of the
16 Legislature that an agency charged with enforcing rules shall
17 issue a notice of noncompliance as its first response to a minor
18 violation of a rule in any instance in which it is reasonable to
19 assume that the violator was unaware of the rule or unclear as
20 to how to comply with it.

21 (2)(a) Each agency shall issue a notice of noncompliance as
22 a first response to a minor violation of a rule. A "notice of
23 noncompliance" is a notification by the agency charged with
24 enforcing the rule issued to the person or business subject to
25 the rule. A notice of noncompliance may not be accompanied with
26 a fine or other disciplinary penalty. It must identify the
27 specific rule that is being violated, provide information on how
28 to comply with the rule, and specify a reasonable time for the
29 violator to comply with the rule. A rule is agency action that
30 regulates a business, occupation, or profession, or regulates a
31 person operating a business, occupation, or profession, and
32 that, if not complied with, may result in a disciplinary
33 penalty.

34 (b) Each agency shall review all of its rules and designate
35 those for which a violation would be a minor violation and for
36 which a notice of noncompliance must be the first enforcement
37 action taken against a person or business subject to regulation.
38 A violation of a rule is a minor violation if it does not result
39 in economic or physical harm to a person or adversely affect the
40 public health, safety, or welfare or create a significant threat
41 of such harm. ~~If an agency under the direction of a cabinet~~



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42 ~~officer mails to each licensee a notice of the designated rules~~
43 ~~at the time of licensure and at least annually thereafter, the~~
44 ~~provisions of paragraph (a) may be exercised at the discretion~~
45 ~~of the agency. Such notice shall include a subject matter index~~
46 ~~of the rules and information on how the rules may be obtained.~~

47 ~~(c) The agency's review and designation must be completed~~
48 ~~by December 1, 1995;~~

49 1. No later than June 30, 2014, and, thereafter, within 3
50 months of any request of the rules ombudsman, each agency shall
51 review under the direction of the Governor shall make a report
52 to the Governor, and each agency under the joint direction of
53 the Governor and Cabinet shall report to the Governor and
54 Cabinet by January 1, 1996, on which of its rules have been
55 designated as rules the violation of which would be a minor
56 violation and certify to the President of the Senate, the
57 Speaker of the House of Representatives, the committee, and the
58 rules ombudsman those rules for which a violation would be
59 considered a minor violation under this paragraph, consistent
60 with the legislative intent stated in subsection (1). Each
61 agency that fails to timely complete the review and file the
62 certification as required by this section is prohibited from
63 imposing any sanction greater than the minimum authorized by law
64 for an initial minor violation until the agency completes and
65 files the required certification.

66 2. Beginning on July 1, 2014, each agency shall:

67 a. Publish all rules of that agency designated as rules the
68 violation of which would be a minor violation, either as a
69 complete list on the agency's Internet webpage or by
70 incorporation of the designations in the agency's disciplinary



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71 guidelines adopted as a rule.

72 b. Ensure that all investigative and enforcement personnel
73 are knowledgeable of the agency's designations under this
74 section.

75 c. For each rule filed for adoption, certify whether any
76 part of the rule is designated as one the violation of which
77 would be a minor violation and shall update the listing required
78 by sub-subparagraph a.

79 (c)~~(d)~~ The Governor or the Governor and Cabinet, as
80 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
81 and designation effects of each agency subject to the direction
82 and supervision of such authority and may direct ~~apply~~ a
83 different designation than that applied by such ~~the~~ agency.

84 (d)~~(e)~~ Notwithstanding s. 120.52(1)(a), this section does
85 not apply to:

- 86 1. The Department of Corrections;
87 2. Educational units;
88 3. The regulation of law enforcement personnel; or
89 4. The regulation of teachers.

90 (e)~~(f)~~ Designation pursuant to this section is not subject
91 to challenge under this chapter.

92
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete lines 996 - 998

96 and insert:

97 amending s. 120.695, F.S.; providing for the
98 designation of minor violations; requiring agency
99 review and certification rules, a violation of which



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100 would be considered a minor violation, by a certain
101 date; providing sanctions for failure to provide
102 certification; requiring certification of minor
103 violation status for rules adopted after a certain
104 date; requiring public notice; providing certain
105 exclusions; amending ss.

By Senator Brandes

22-00843A-13

20131696__

A bill to be entitled

An act relating to administrative procedures; amending s. 120.52, F.S.; defining the term "small business" as used in the Administrative Procedure Act; amending s. 120.56, F.S.; providing that the agency has the burden of proof in proceedings challenging the validity of existing rules and unadopted agency statements; amending s. 120.595, F.S.; removing certain exceptions from requirements that attorney fees and costs be rendered against the agency in proceedings in which the petitioner prevails in a challenge to an unadopted agency statement; amending s. 120.573, F.S.; authorizing any party to request mediation of rule challenge and declaratory statement proceedings; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; amending ss. 420.9072, 420.9075, and 443.091, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (18) through (22) of section 120.52, Florida Statutes, are renumbered as subsections (19) through (23), respectively, and a new subsection (18) is added to that section, to read:

120.52 Definitions.—As used in this act:

(18) "Small business" has the same meaning as provided in s. 288.703.

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Section 2. Paragraph (a) of subsection (3) and paragraph (b) of subsection (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. The petitioner has the burden of going forward. The agency then has the burden to prove ~~proving~~ by a preponderance of the evidence that the existing rule is not an invalid exercise of delegated legislative authority as to the objections raised.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.—

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The petitioner has the burden of going forward. If a hearing is held and the petitioner proves the allegations of the petition, The agency then has ~~shall have~~ the burden to prove by a preponderance of the evidence that the statement does not constitute a rule under s. 120.52, that the

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59 agency adopted the statement by the rulemaking procedure
 60 provided by s. 120.54, or ~~of proving~~ that rulemaking is not
 61 feasible or not practicable under s. 120.54(1)(a).

62 Section 3. Section 120.595, Florida Statutes, is amended to
 63 read:

64 120.595 Attorney ~~Attorney's~~ fees.—

65 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 66 120.57(1).—

67 (a) The provisions of this subsection are supplemental to,
 68 and do not abrogate, other provisions allowing the award of fees
 69 or costs in administrative proceedings.

70 (b) The final order in a proceeding pursuant to s.
 71 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney
 72 fees ~~attorney's fee~~ to the prevailing party only where the
 73 nonprevailing adverse party has been determined by the
 74 administrative law judge to have participated in the proceeding
 75 for an improper purpose.

76 (c) In proceedings pursuant to s. 120.57(1), and upon
 77 motion, the administrative law judge shall determine whether any
 78 party participated in the proceeding for an improper purpose as
 79 defined by this subsection. In making such determination, the
 80 administrative law judge shall consider whether the
 81 nonprevailing adverse party has participated in two or more
 82 other such proceedings involving the same prevailing party and
 83 the same project as an adverse party and in which such two or
 84 more proceedings the nonprevailing adverse party did not
 85 establish either the factual or legal merits of its position,
 86 and shall consider whether the factual or legal position
 87 asserted in the instant proceeding would have been cognizable in

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88 the previous proceedings. In such event, it shall be rebuttably
 89 presumed that the nonprevailing adverse party participated in
 90 the pending proceeding for an improper purpose.

91 (d) In any proceeding in which the administrative law judge
 92 determines that a party participated in the proceeding for an
 93 improper purpose, the recommended order shall so designate and
 94 shall determine the award of costs and attorney ~~attorney's~~ fees.

95 (e) For the purpose of this subsection:

96 1. "Improper purpose" means participation in a proceeding
 97 pursuant to s. 120.57(1) primarily to harass or to cause
 98 unnecessary delay or for frivolous purpose or to needlessly
 99 increase the cost of litigation, licensing, or securing the
 100 approval of an activity.

101 2. "Costs" has the same meaning as the costs allowed in
 102 civil actions in this state as provided in chapter 57.

103 3. "Nonprevailing adverse party" means a party that has
 104 failed to have substantially changed the outcome of the proposed
 105 or final agency action which is the subject of a proceeding. In
 106 the event that a proceeding results in any substantial
 107 modification or condition intended to resolve the matters raised
 108 in a party's petition, it shall be determined that the party
 109 having raised the issue addressed is not a nonprevailing adverse
 110 party. The recommended order shall state whether the change is
 111 substantial for purposes of this subsection. In no event shall
 112 the term "nonprevailing party" or "prevailing party" be deemed
 113 to include any party that has intervened in a previously
 114 existing proceeding to support the position of an agency.

115 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
 116 120.56(2).—If the appellate court or administrative law judge

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117 declares a proposed rule or portion of a proposed rule invalid
 118 pursuant to s. 120.56(2), a judgment or order shall be rendered
 119 against the agency for reasonable costs and reasonable attorney
 120 ~~attorney's~~ fees, unless the agency demonstrates that its actions
 121 were substantially justified or special circumstances exist
 122 which would make the award unjust. An agency's actions are
 123 "substantially justified" if there was a reasonable basis in law
 124 and fact at the time the actions were taken by the agency. If
 125 the agency prevails in the proceedings, the appellate court or
 126 administrative law judge shall award reasonable costs and
 127 reasonable attorney ~~attorney's~~ fees against a party if the
 128 appellate court or administrative law judge determines that a
 129 party participated in the proceedings for an improper purpose as
 130 defined by paragraph (1) (e). An ~~No~~ award of attorney ~~attorney's~~
 131 fees as provided by this subsection may not ~~shall~~ exceed
 132 \$50,000.

133 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
 134 120.56(3) AND (5).—If the appellate court or administrative law
 135 judge declares a rule or portion of a rule invalid pursuant to
 136 s. 120.56(3) or (5), a judgment or order shall be rendered
 137 against the agency for reasonable costs and reasonable attorney
 138 ~~attorney's~~ fees, unless the agency demonstrates that its actions
 139 were substantially justified or special circumstances exist
 140 which would make the award unjust. An agency's actions are
 141 "substantially justified" if there was a reasonable basis in law
 142 and fact at the time the actions were taken by the agency. If
 143 the agency prevails in the proceedings, the appellate court or
 144 administrative law judge shall award reasonable costs and
 145 reasonable attorney ~~attorney's~~ fees against a party if the

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146 appellate court or administrative law judge determines that a
 147 party participated in the proceedings for an improper purpose as
 148 defined by paragraph (1) (e). An ~~No~~ award of attorney ~~attorney's~~
 149 fees as provided by this subsection may not ~~shall~~ exceed
 150 \$50,000.

151 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 152 120.56(4).—

153 (a) If the appellate court or administrative law judge
 154 determines that all or part of an agency statement violates s.
 155 120.54(1) (a), or that the agency must immediately discontinue
 156 reliance on the statement and any substantially similar
 157 statement pursuant to s. 120.56(4) (e), a judgment or order shall
 158 be entered against the agency for reasonable costs and
 159 reasonable attorney ~~attorney's~~ fees, unless the agency
 160 demonstrates that the statement is required by the Federal
 161 Government to implement or retain a delegated or approved
 162 program or to meet a condition to receipt of federal funds.

163 (b) Upon notification to the administrative law judge
 164 provided before the final hearing that the agency has published
 165 a notice of rulemaking under s. 120.54(3) (a), such notice shall
 166 automatically operate as a stay of proceedings pending
 167 rulemaking. The administrative law judge may vacate the stay for
 168 good cause shown. A stay of proceedings under this paragraph
 169 remains in effect so long as the agency is proceeding
 170 expeditiously and in good faith to adopt the statement as a
 171 rule. The administrative law judge shall award reasonable costs
 172 and reasonable attorney ~~attorney's~~ fees accrued by the
 173 petitioner before ~~prior to~~ the date the notice was published,
 174 ~~unless the agency proves to the administrative law judge that it~~

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175 ~~did not know and should not have known that the statement was an~~
 176 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
 177 ~~and paragraph (a) shall be awarded only upon a finding that the~~
 178 ~~agency received notice that the statement may constitute an~~
 179 ~~unadopted rule at least 30 days before a petition under s.~~
 180 ~~120.56(4) was filed and that the agency failed to publish the~~
 181 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
 182 ~~addresses the statement within that 30 day period. Notice to the~~
 183 ~~agency may be satisfied by its receipt of a copy of the s.~~
 184 ~~120.56(4) petition, a notice or other paper containing~~
 185 ~~substantially the same information, or a petition filed pursuant~~
 186 ~~to s. 120.54(7)). An award of attorney attorney's fees as~~
 187 provided by this paragraph may not exceed \$50,000.

188 (c) Notwithstanding the provisions of chapter 284, an award
 189 shall be paid from the budget entity of the secretary, executive
 190 director, or equivalent administrative officer of the agency,
 191 and the agency is ~~shall~~ not be entitled to payment of an award
 192 or reimbursement for payment of an award under any provision of
 193 law.

194 (d) If the agency prevails in the proceedings, the
 195 appellate court or administrative law judge shall award
 196 reasonable costs and attorney attorney's fees against a party if
 197 the appellate court or administrative law judge determines that
 198 the party participated in the proceedings for an improper
 199 purpose as defined in paragraph (1)(e) or that the party or the
 200 party's attorney knew or should have known that a claim was not
 201 supported by the material facts necessary to establish the claim
 202 or would not be supported by the application of then-existing
 203 law to those material facts.

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204 (5) APPEALS.—When there is an appeal, the court in its
 205 discretion may award reasonable attorney attorney's fees and
 206 reasonable costs to the prevailing party if the court finds that
 207 the appeal was frivolous, meritless, or an abuse of the
 208 appellate process, or that the agency action which precipitated
 209 the appeal was a gross abuse of the agency's discretion. Upon
 210 review of agency action that precipitates an appeal, if the
 211 court finds that the agency improperly rejected or modified
 212 findings of fact in a recommended order, the court shall award
 213 reasonable attorney attorney's fees and reasonable costs to a
 214 prevailing appellant for the administrative proceeding and the
 215 appellate proceeding.

216 (6) OTHER SECTIONS NOT AFFECTED.—Other provisions,
 217 including ss. 57.105 and 57.111, authorize the award of attorney
 218 attorney's fees and costs in administrative proceedings. ~~Nothing~~
 219 ~~in~~ This section does not shall affect the availability of
 220 attorney attorney's fees and costs as provided in those
 221 sections.

222 Section 4. Section 120.573, Florida Statutes, is amended to
 223 read:

224 120.573 Mediation of disputes.—

225 (1) Each announcement of an agency action that affects
 226 substantial interests shall advise whether mediation of the
 227 administrative dispute for the type of agency action announced
 228 is available and that choosing mediation does not affect the
 229 right to an administrative hearing. If the agency and all
 230 parties to the administrative action agree to mediation, in
 231 writing, within 10 days after the time period stated in the
 232 announcement for election of an administrative remedy under ss.

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 233 120.569 and 120.57, the time limitations imposed by ss. 120.569
 234 and 120.57 shall be tolled to allow the agency and parties to
 235 mediate the administrative dispute. The mediation shall be
 236 concluded within 60 days of such agreement unless otherwise
 237 agreed by the parties. The mediation agreement shall include
 238 provisions for mediator selection, the allocation of costs and
 239 fees associated with mediation, and the mediating parties'
 240 understanding regarding the confidentiality of discussions and
 241 documents introduced during mediation. If mediation results in
 242 settlement of the administrative dispute, the agency shall enter
 243 a final order incorporating the agreement of the parties. If
 244 mediation terminates without settlement of the dispute, the
 245 agency shall notify the parties in writing that the
 246 administrative hearing processes under ss. 120.569 and 120.57
 247 are resumed.

248 (2) Any party to a proceeding conducted pursuant to a
 249 petition seeking an administration determination of the
 250 invalidity of an existing rule, proposed rule, or unadopted
 251 agency statement under s. 120.56 or a proceeding conducted
 252 pursuant to a petition seeking a declaratory statement under s.
 253 120.565 may request mediation of the dispute under this section.

254 Section 5. Subsection (2) of section 120.695, Florida
 255 Statutes, is amended to read:

256 120.695 Notice of noncompliance.-

257 (2) (a) Each agency shall issue a notice of noncompliance as
 258 a first response to a minor violation of a rule. A "notice of
 259 noncompliance" is a notification by the agency charged with
 260 enforcing the rule issued to the person or business subject to
 261 the rule. A notice of noncompliance may not be accompanied with

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 262 a fine or other disciplinary penalty. It must identify the
 263 specific rule that is being violated, provide information on how
 264 to comply with the rule, and specify a reasonable time for the
 265 violator to comply with the rule. A rule is agency action that
 266 regulates a business, occupation, or profession, or regulates a
 267 person operating a business, occupation, or profession, and
 268 that, if not complied with, may result in a disciplinary
 269 penalty.

270 ~~(b) Each agency shall review all of its rules and designate~~
 271 ~~those for which A violation would be a minor violation and for~~
 272 ~~which a notice of noncompliance must be the first enforcement~~
 273 ~~action taken against a person or business subject to regulation.~~
 274 ~~A violation of a rule is a minor violation if it does not result~~
 275 ~~in economic or physical harm to a person or adversely affect the~~
 276 ~~public health, safety, or welfare or create a significant threat~~
 277 ~~of such harm. If an agency under the direction of a cabinet~~
 278 ~~officer mails to each licensee a notice of the designated rules~~
 279 ~~at the time of licensure and at least annually thereafter, the~~
 280 ~~provisions of paragraph (a) may be exercised at the discretion~~
 281 ~~of the agency. Such notice shall include a subject matter index~~
 282 ~~of the rules and information on how the rules may be obtained.~~

283 ~~(c) The agency's review and designation must be completed~~
 284 ~~by December 1, 1995; each agency under the direction of the~~
 285 ~~Governor shall make a report to the Governor, and each agency~~
 286 ~~under the joint direction of the Governor and Cabinet shall~~
 287 ~~report to the Governor and Cabinet by January 1, 1996, on which~~
 288 ~~of its rules have been designated as rules the violation of~~
 289 ~~which would be a minor violation.~~

290 ~~(d) The Governor or the Governor and Cabinet, as~~

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291 ~~appropriate pursuant to paragraph (c), may evaluate the review~~
 292 ~~and designation effects of each agency and may apply a different~~
 293 ~~designation than that applied by the agency.~~

294 ~~(c)(e)~~ This section does not apply to the regulation of law
 295 enforcement personnel or teachers.

296 ~~(f) Designation pursuant to this section is not subject to~~
 297 ~~challenge under this chapter.~~

298 Section 6. Paragraph (a) of subsection (1) of section
 299 420.9072, Florida Statutes, is amended to read:

300 420.9072 State Housing Initiatives Partnership Program.—The
 301 State Housing Initiatives Partnership Program is created for the
 302 purpose of providing funds to counties and eligible
 303 municipalities as an incentive for the creation of local housing
 304 partnerships, to expand production of and preserve affordable
 305 housing, to further the housing element of the local government
 306 comprehensive plan specific to affordable housing, and to
 307 increase housing-related employment.

308 (1) (a) In addition to the legislative findings set forth in
 309 s. 420.6015, the Legislature finds that affordable housing is
 310 most effectively provided by combining available public and
 311 private resources to conserve and improve existing housing and
 312 provide new housing for very-low-income households, low-income
 313 households, and moderate-income households. The Legislature
 314 intends to encourage partnerships in order to secure the
 315 benefits of cooperation by the public and private sectors and to
 316 reduce the cost of housing for the target group by effectively
 317 combining all available resources and cost-saving measures. The
 318 Legislature further intends that local governments achieve this
 319 combination of resources by encouraging active partnerships

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320 between government, lenders, builders and developers, real
 321 estate professionals, advocates for low-income persons, and
 322 community groups to produce affordable housing and provide
 323 related services. Extending the partnership concept to encompass
 324 cooperative efforts among small counties as defined in s. 120.52
 325 ~~120.52(19)~~, and among counties and municipalities is
 326 specifically encouraged. Local governments are also intended to
 327 establish an affordable housing advisory committee to recommend
 328 monetary and nonmonetary incentives for affordable housing as
 329 provided in s. 420.9076.

330 Section 7. Subsection (7) of section 420.9075, Florida
 331 Statutes, is amended to read:

332 420.9075 Local housing assistance plans; partnerships.—

333 (7) The moneys deposited in the local housing assistance
 334 trust fund shall be used to administer and implement the local
 335 housing assistance plan. The cost of administering the plan may
 336 not exceed 5 percent of the local housing distribution moneys
 337 and program income deposited into the trust fund. A county or an
 338 eligible municipality may not exceed the 5-percent limitation on
 339 administrative costs, unless its governing body finds, by
 340 resolution, that 5 percent of the local housing distribution
 341 plus 5 percent of program income is insufficient to adequately
 342 pay the necessary costs of administering the local housing
 343 assistance plan. The cost of administering the program may not
 344 exceed 10 percent of the local housing distribution plus 5
 345 percent of program income deposited into the trust fund, except
 346 that small counties, as defined in s. 120.52 ~~120.52(19)~~, and
 347 eligible municipalities receiving a local housing distribution
 348 of up to \$350,000 may use up to 10 percent of program income for

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349 administrative costs.

350 Section 8. Paragraph (d) of subsection (1) of section
351 443.091, Florida Statutes, is amended to read:

352 443.091 Benefit eligibility conditions.—

353 (1) An unemployed individual is eligible to receive
354 benefits for any week only if the Department of Economic
355 Opportunity finds that:

356 (d) She or he is able to work and is available for work. In
357 order to assess eligibility for a claimed week of unemployment,
358 the department shall develop criteria to determine a claimant's
359 ability to work and availability for work. A claimant must be
360 actively seeking work in order to be considered available for
361 work. This means engaging in systematic and sustained efforts to
362 find work, including contacting at least five prospective
363 employers for each week of unemployment claimed. The department
364 may require the claimant to provide proof of such efforts to the
365 one-stop career center as part of reemployment services. The
366 department shall conduct random reviews of work search
367 information provided by claimants. As an alternative to
368 contacting at least five prospective employers for any week of
369 unemployment claimed, a claimant may, for that same week, report
370 in person to a one-stop career center to meet with a
371 representative of the center and access reemployment services of
372 the center. The center shall keep a record of the services or
373 information provided to the claimant and shall provide the
374 records to the department upon request by the department.
375 However:

376 1. Notwithstanding any other provision of this paragraph or
377 paragraphs (b) and (e), an otherwise eligible individual may not

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378 be denied benefits for any week because she or he is in training
379 with the approval of the department, or by reason of s.
380 443.101(2) relating to failure to apply for, or refusal to
381 accept, suitable work. Training may be approved by the
382 department in accordance with criteria prescribed by rule. A
383 claimant's eligibility during approved training is contingent
384 upon satisfying eligibility conditions prescribed by rule.

385 2. Notwithstanding any other provision of this chapter, an
386 otherwise eligible individual who is in training approved under
387 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
388 determined ineligible or disqualified for benefits due to
389 enrollment in such training or because of leaving work that is
390 not suitable employment to enter such training. As used in this
391 subparagraph, the term "suitable employment" means work of a
392 substantially equal or higher skill level than the worker's past
393 adversely affected employment, as defined for purposes of the
394 Trade Act of 1974, as amended, the wages for which are at least
395 80 percent of the worker's average weekly wage as determined for
396 purposes of the Trade Act of 1974, as amended.

397 3. Notwithstanding any other provision of this section, an
398 otherwise eligible individual may not be denied benefits for any
399 week because she or he is before any state or federal court
400 pursuant to a lawfully issued summons to appear for jury duty.

401 4. Union members who customarily obtain employment through
402 a union hiring hall may satisfy the work search requirements of
403 this paragraph by reporting daily to their union hall.

404 5. The work search requirements of this paragraph do not
405 apply to persons who are unemployed as a result of a temporary
406 layoff or who are claiming benefits under an approved short-time

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407 compensation plan as provided in s. 443.1116.

408 6. In small counties as defined in s. 120.52 ~~120.52(19)~~, a
409 claimant engaging in systematic and sustained efforts to find
410 work must contact at least three prospective employers for each
411 week of unemployment claimed.

412 Section 9. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: April 1, 2013

I respectfully request that **Senate Bill #1696**, relating to Administrative Procedures, be placed on the:

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



Senator Jeff Brandes
Florida Senate, District 22

Cc: Joe McVaney



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Criminal Justice, *Vice Chair*
Rules, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR CHRISTOPHER L. SMITH

Democratic Leader
31st District

April 9, 2013

The Honorable Senator Jeremy Ring , Chairman
Senate Committee on Governmental Oversight and Accountability
Suite 405 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

RECEIVED
APR 09 2013
GOVERNMENTAL OPERATIONS

Dear Senator Ring

Please excuse Senator Christopher L. Smith from Senate Committee on Governmental Oversight and Accountability that was held on April 9, 2013 at 4:00 PM. The Senator had to tape a Comcast Show and the taping ran overtime.

Thank you in advance for your consideration

Sincerely

Diane Randolph
Legislative Assistant to
Leader Chris Smith
District 31

Cc: Senator Hayes Vice Chair
Cc: Courtney Hicks

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412

Case:

Caption: Senate Governmental Oversight and Accountability Committee

Type:

Judge:

Started: 4/9/2013 4:08:11 PM

Ends: 4/9/2013 4:40:04 PM **Length:** 00:31:54

4:08:20 PM SB 1122 by Sen. Simpson
4:12:11 PM SB 1734 by Sen. Flores
4:13:45 PM SB 1080 by Sen. Evers
4:16:11 PM SB 1424 by Sen. Evers
4:17:11 PM SB 1806 by Environmental Preservation Committee
4:19:11 PM SB 824 by Sen. Garcia
4:21:50 PM SB 1014 by Sen. Garcia
4:24:30 PM SB 1848 by Banking and Insurance Committee
4:26:11 PM SB 1850 by Banking and Insurance Committee
4:27:11 PM SB 834 by Sen. Simmons
4:28:11 PM SB 1276 by Sen. Montford
4:30:11 PM SB 1756 by Sen. Montford
4:33:30 PM SB 1696 by Sen. Brandes
4:36:50 PM Confirmation of Appointees
4:37:50 PM SB 1260 by Sen. Ring
4:38:50 PM SB 606 by Sen. Gibson
4:39:11 PM Comments - Sen. Bradley