

**SB 264** by **Brandes**; Inflation and Deflation

**CS/SB 238** by **CJ, Joyner**; (Similar to H 0069) Public Records/Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel

690076 A S RCS GO, Smith Delete L.214: 01/16 09:50 AM

**SB 256** by **Garcia**; (Similar to H 0111) Public Records/Forensic Behavioral Health Evaluation

**SM 118** by **Hays**; (Identical to H 0015) National Retail Sales Tax

**SB 388** by **Bean**; (Identical to H 0117) Public Retirement Plans

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

**MEETING DATE:** Thursday, January 16, 2014  
**TIME:** 9:00 —11:00 a.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	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 264</b> Brandes	Inflation and Deflation; Requiring each state agency, including the judicial branch, to identify all statutes relating to the agency which contain a reference to a monetary amount; requiring each state agency to submit an initial report relating to those findings and make recommendations to the Governor and Legislature by a certain date as to whether those amounts should be adjusted; requiring each agency to submit a final report containing final recommendations to the Governor and Legislature by a certain date and include a fiscal impact statement for each recommended statutory change to the monetary amount, etc.  GO 01/16/2014 Favorable AFT AP	Favorable Yeas 9 Nays 0
2	<b>CS/SB 238</b> Criminal Justice / Joyner (Similar H 69)	Public Records/Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel; Creating an exemption from public records requirements for the names of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; providing for future review and repeal of the exemption; providing a statement of necessity, etc.  CJ 11/04/2013 Fav/CS GO 01/16/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0
3	<b>SB 256</b> Garcia (Similar H 111)	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 statement of public necessity, etc.  CJ 12/09/2013 Favorable GO 01/16/2014 Temporarily Postponed RC	Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Thursday, January 16, 2014, 9:00 —11:00 a.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SM 118</b> Hays (Identical HM 15)	National Retail Sales Tax; Urging Congress to repeal all taxes on income and enact a national retail sales tax as specified in H.R. 25, the Fair Tax Act of 2013, etc.  CM 12/09/2013 Favorable GO 01/16/2014 Favorable RC	Favorable Yeas 8 Nays 0
5	<b>SB 388</b> Bean (Identical H 117)	Public Retirement Plans; Providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law, etc.  GO 01/16/2014 Favorable CA AFT AP	Favorable Yeas 8 Nays 0

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Other Related Meeting Documents

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

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

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

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BILL: SB 264

INTRODUCER: Senator Brandes

SUBJECT: Inflation and Deflation

DATE: January 8, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	<b>Favorable</b>
2.			AFT	
3.			AP	

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**I. Summary:**

SB 264 requires executive branch agencies and the judicial branch to identify and gather information about every statutory provision specifying monetary amounts, and make findings and recommendations in a final report as to whether any of those amounts should be changed.

**II. Present Situation:**

The Florida Statutes contain an indeterminate number of provisions (hundreds, at the least) specifying a monetary amount fixed at the time of enactment.

A representative, and by no means exhaustive, list of the types of statutory monetary amounts applicable to the executive branch of state government includes the following:

- Florida Lottery provisions
- Campaign finance laws
- Child support amounts
- Regulatory fees
- Fees for governmental services
- Penalties for traffic infractions
- Criminal penalties
- Thresholds defining criminal activity
- Bid thresholds for public entity procurements and bid protest provisions
- Requirements relating to financial institutions and insurance companies
- Reimbursement requirements
- Meal and per diem reimbursement amounts for public sector employees and officers
- Sovereign immunity

The judicial branch is affected by statutory monetary amounts specifying the thresholds for which courts handle civil actions, service charges and fees collected by clerks of court, and juror fees.

The vast majority of these amounts make no provision for adjustment and are only adjustable by legislative action. A very small minority of the fixed monetary amounts in statute provide for adjustment by reference to the Consumer Price Index, which is a measure produced by the Bureau of Labor Statistics of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.<sup>1</sup> Because the vast majority of monetary amounts in statute are not subsequently adjusted, those unadjusted amounts reflect economic realities embedded in legislative policymaking fixed at the time of enactment or modification, that therefore do not reflect the operation of macroeconomic forces.

### III. Effect of Proposed Changes:

The bill requires each state agency<sup>2</sup> to identify, by July 1, 2015, all statutes over which the agency has implementation, administrative, or enforcement authority which contain a reference to a monetary amount and determine the:

- Original enactment date of the provision;
- Purpose of including the monetary amount in statute; and
- Date that the monetary value was last adjusted.

By August 1, 2015, each state agency must produce an initial report with the above information and initial findings as to whether each monetary amount should be adjusted to reflect changes to the real value of money resulting from inflation or deflation.

Between August 1, 2015, and September 15, 2015, each agency must request public input on its findings and recommendations in the initial report. The public input must be considered when the agency makes its final report

By October 31, 2015, each state agency must submit a final report to the Governor, Senate president, and House Speaker, containing the agency's final recommendations, proposed statutory changes, and fiscal impact statements.

The provisions of the bill expire on December 31, 2015.

### IV. Constitutional Issues:

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

None.

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<sup>1</sup> <http://stats.bls.gov/cpi/cpifaq.htm>, last visited on January 8, 2014.

<sup>2</sup> The bill defines "state agency" as each agency or department of the executive branch of state government; the Justice Administrative Commission on behalf of the state attorneys, public defenders, criminal conflict and civil regional counsel, and capital collateral regional counsel; the Florida Clerks of Court Operations Corporation on behalf of itself and the clerks of courts; and the Office of the State Courts Administrator on behalf of the judicial branch.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State agencies may incur indirect costs in staff time devoted to gathering and compiling the information required by the survey, reporting, and public input requirements in the bill.

State agencies may also incur direct, and probably minimal, costs in complying with the public input requirements of the bill, depending on the method each agency uses to solicit the public input.

**VI. Technical Deficiencies:**

The bill uses the phrases “monetary amount” and “monetary value,” apparently synonymously. If the phrases are intended to be synonymous, one phrase could be consistently used for clarity.

**VII. Related Issues:**

The bill does not dictate how each agency ought to request public input; agency efforts in that regard may therefore be varied. The time period specified in the bill for doing so, six weeks, might not be sufficient for agencies that do extensive outreach and receive extensive feedback.

For laws without explicit statements of legislative intent, it may sometimes be difficult for agencies to assert the purpose of including the monetary amount in statute.

Agencies may be reluctant to opine on whether taxes and fees ought to be adjusted, since setting those amounts are policy determinations required to be made by the legislature.

If the “fiscal impact statement” is intended to be the one required by s. 216.065, F.S., the bill should explicitly so provide. The level of detail provided in each agency’s “fiscal impact statement” will be different without a standardized format.

**VIII. Statutes Affected:**

This bill creates an unnumbered section of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Brandes

22-00428B-14

2014264\_\_

1 A bill to be entitled  
 2 An act relating to inflation and deflation; providing  
 3 legislative intent; providing a definition; requiring  
 4 each state agency, including the judicial branch, to  
 5 identify all statutes relating to the agency which  
 6 contain a reference to a monetary amount; requiring  
 7 each state agency to submit an initial report relating  
 8 to those findings and make recommendations to the  
 9 Governor and Legislature by a certain date as to  
 10 whether those amounts should be adjusted; requiring  
 11 the posting of the reports on each agency's respective  
 12 public website; requesting public input on the  
 13 findings and recommendations; requiring each agency to  
 14 submit a final report containing final recommendations  
 15 to the Governor and Legislature by a certain date and  
 16 include a fiscal impact statement for each recommended  
 17 statutory change to the monetary amount; providing for  
 18 expiration; providing an effective date.

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

22 Section 1. State agency monetary report.—

23 (1) INTENT.—It is the intent of the Legislature that any  
 24 statutory provision specifying a fixed monetary amount be  
 25 regularly reviewed for the purpose of incorporating changes in  
 26 the real value of money resulting from inflation or deflation.

27 (2) DEFINITION.—As used in this section, the term "state  
 28 agency" includes each agency or department of the executive  
 29 branch of state government; the Justice Administrative

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

22-00428B-14

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30 Commission on behalf of the state attorneys, public defenders,  
 31 criminal conflict and civil regional counsel, and capital  
 32 collateral regional counsel; the Florida Clerks of Court  
 33 Operations Corporation on behalf of itself and the clerks of  
 34 courts; and the Office of the State Courts Administrator on  
 35 behalf of the judicial branch.

36 (3) STATUTORY SURVEY.—By July 1, 2015, each state agency  
 37 shall identify all statutes over which the agency has  
 38 implementation, administrative, or enforcement authority which  
 39 contain a reference to a monetary amount and determine the:

40 (a) Date of the original enactment of the provision;

41 (b) Purpose of including the monetary amount in statute;

42 and

43 (c) Date that the monetary value was last adjusted.

44 (4) INITIAL REPORT.—

45 (a) By August 1, 2015, each state agency shall produce an  
 46 initial report providing the information compiled under  
 47 subsection (3) and initial findings as to whether the monetary  
 48 amount cited in each statute should be adjusted to reflect  
 49 changes to the real value of money resulting from inflation or  
 50 deflation. Any recommendation to adjust the monetary amount must  
 51 include:

52 1. An analysis to support the recommendation; and

53 2. If an adjustment is recommended, alternative  
 54 methodologies for the implementation of a one-time adjustment or  
 55 for making periodic adjustments using a recommended index, or a  
 56 combination of adjustment methodologies.

57 (b) The initial report shall be provided to the Governor,  
 58 the President of the Senate, and the Speaker of the House of

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

22-00428B-14

2014264\_\_

59 Representatives and posted on the agency's publicly accessible  
60 website.

61 (5) PUBLIC INPUT.—Between August 1, 2015, and September 15,  
62 2015, each agency shall request public input on its findings and  
63 recommendations as provided in the initial report. The agency  
64 shall consider the public input in compiling its final  
65 recommendations to the Governor and Legislature.

66 (6) FINAL REPORT.—By October 31, 2015, each state agency  
67 shall submit a final report to the Governor, the President of  
68 the Senate, and the Speaker of the House of Representatives  
69 containing its final recommendations regarding adjustments to  
70 current statutory monetary amounts. The report must also include  
71 any proposed statutory changes and a fiscal impact statement for  
72 each proposed change as it relates to both the public and  
73 private sectors.

74 (7) EXPIRATION.—This section expires December 31, 2015.  
75 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/16/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 264  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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:**  
Transportation, *Chair*  
Agriculture  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Education  
Health Policy

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

**SENATOR JEFF BRANDES**

22nd District

January 16, 2013

The Honorable Senator Jeremy Ring, Chair  
Committee on Governmental Oversight and Accountability  
405 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Ring,

My Legislative Assistant Chris Spencer will present Senate Bill 246, Inflation and Deflation, on my behalf, tomorrow January 16, 2014. I will be unable to attend the meeting.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 22

CC: Joe McVaney,  
Staff Director

**REPLY TO:**

- 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Transportation, *Chair*  
Agriculture  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Education  
Health Policy

### SELECT COMMITTEE:

Select Committee on Patient Protection  
and Affordable Care Act

**SENATOR JEFF BRANDES**

22nd District

December 31, 2013

Senator Jeremy Ring, Chair  
Committee on Governmental Accountability and Oversight  
405 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Chair Ring:

Please place Senate Bill 264, Inflation and Deflation, on the Governmental Oversight and Accountability Committee agenda at your earliest convenience.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Senator Jeff Brandes

Cc: Joe McVaney, Staff Director

#### REPLY TO:

- 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

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

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BILL: CS/CS/SB 238

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

SUBJECT: Public Records/Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel

DATE: January 16, 2014      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 238 expands an existing public records exemption for certain personal identification and location information of current and former public defenders, of current and former criminal conflict and civil regional counsel, and of the spouses and children of such defenders and counsel. This bill provides that the exemption also protects the *names* of such spouses and children.

The addition to the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature. The bill also clarifies the existing, general Open Government Sunset Review Act repeal date for agency personnel public records exemptions.

The bill contains 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 passage.

## 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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act<sup>10</sup> 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.<sup>11</sup> It further provides that a public records exemption may be created

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

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

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

<sup>4</sup> 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)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> 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.<sup>12</sup>

### **Current Exemptions Relating to Agency Personnel in s. 119.071(4)(d), F.S.**

Section 119.071(4)(d), F.S., currently provides public records exemptions for specified personal identification and location information of the following current or former agency personnel, as well as for specified personal identification and location information of their spouses and children, including the following:

- Law enforcement and specified agency investigative personnel;<sup>13</sup>
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Department of Business and Professional Regulation investigators and inspectors; and
- County tax collectors.

Although there is some inconsistency among the types of information exempted,<sup>14</sup> all of the exemptions protect the following information:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

Nine of the exemptions protect the names of the following current or former agency personnel's spouses and children:

- Law enforcement and specified agency investigative personnel;
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;

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<sup>12</sup> Section 119.15(5)(b), F.S.

<sup>13</sup> Included in this category are the following: active or former sworn or civilian law enforcement personnel, including Department of Corrections officers and correctional probation officers, Department of Children and Families abuse and exploitation investigators, Department of Health child abuse investigators, and Department of Revenue collection and enforcement personnel.

<sup>14</sup> Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children.

- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Department of Business and Professional Regulation inspectors and investigators; and
- County tax collectors.

The public necessity statements for these agency personnel public-records exemptions suggest that the persons engaged in the specified occupations are at risk of becoming objects of public ire, because the specified occupations require decisions, actions, or information-sharing that could elicit significant emotional reactions from the public. In extreme instances, those emotional reactions could lead to acts of violence against the agency personnel and their families.

### **Public Defenders and Criminal Conflict and Civil Regional Counsel**

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases.<sup>15</sup> Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.<sup>16</sup>

Current law provides a public records exemption for the following personal identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel:

- Home addresses, telephone numbers, dates of birth, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.<sup>17</sup>

The public records exemption does not protect the names of the spouses and children of such defenders or counsel. According to the Offices of the Public Defender, some defenders and counsel protected by the exemption have received verbal threats to their families.<sup>18</sup>

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

Current law provides a public records exemption for personal identification and location information of current and former public defenders, of current and former criminal conflict and civil regional counsel, and of the spouses and children of such defenders and counsel. This bill expands the exemption to also protect the *names* of the spouses and children.

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<sup>15</sup> See s. 27.51, F.S., and s. 27.511, F.S.

<sup>16</sup> See s. 27.511(6)(a), F.S.

<sup>17</sup> Section 119.071(4)(d)2.j., F.S.

<sup>18</sup> Information obtained from a phone call between Governmental Oversight and Accountability staff and Offices of the Public Defender staff (January 10, 2014).

The bill provides for repeal of the expanded portion of the exemption on October 2, 2019, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature.

Current law provides that the agency personnel public records exemptions in s. 119.071(4)(d), F.S., which include the defender and counsel exemption, will repeal pursuant to the Open Government Sunset Review Act on October 2, 2017, unless reenacted by the Legislature. This bill clarifies that the general repeal date applies unless otherwise expressly provided in that paragraph of law.

It also provides a statement of public necessity as required by the Florida Constitution. The statement of public necessity concludes that some people with whom public defenders and criminal conflict and civil regional counsel have contact may seek to harm their spouses and children and that therefore, the exemption is warranted.

The bill's effective date is October 1, 2014.

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

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

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 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 of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

###### **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. Because this bill expands a public records exemption, it contains a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including the names of spouses and children of specified agency personnel in the existing exemption that protects certain personal information. 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.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could create a minimal impact on agencies, because staff responsible for complying with public records requests could require training related to the changes in the exemption. The costs should be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Governmental Oversight and Accountability on January 16, 2014:**

The CS/CS clarifies that the general Open Government Sunset Review repeal date for the agency personnel public records exemptions, which include the defender and counsel exemption, applies unless otherwise specified in the paragraph of law.

**CS by Criminal Justice on November 4, 2013:**

The CS modifies the statement of public necessity to provide a more complete description of the volatile nature of the work of public defenders and criminal conflict and regional counsel.

B. Amendments:

None.

---

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

---



690076

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2014	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete line 214

and insert:

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government  
Sunset

By the Committee on Criminal Justice; and Senator Joyner

591-00606-14

2014238c1

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; creating an exemption from public  
 4 records requirements for the names of the spouses and  
 5 children of current or former public defenders,  
 6 assistant public defenders, criminal conflict and  
 7 civil regional counsel, and assistant criminal  
 8 conflict and civil regional counsel; providing for  
 9 future review and repeal of the exemption; providing a  
 10 statement of necessity; providing an effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Paragraph (d) of subsection (4) of section  
 15 119.071, Florida Statutes, is amended to read:  
 16 119.071 General exemptions from inspection or copying of  
 17 public records.—  
 18 (4) AGENCY PERSONNEL INFORMATION.—  
 19 (d)1. For purposes of this paragraph, the term "telephone  
 20 numbers" includes home telephone numbers, personal cellular  
 21 telephone numbers, personal pager telephone numbers, and  
 22 telephone numbers associated with personal communications  
 23 devices.  
 24 2.a.(I) The home addresses, telephone numbers, social  
 25 security numbers, dates of birth, and photographs of active or  
 26 former sworn or civilian law enforcement personnel, including  
 27 correctional and correctional probation officers, personnel of  
 28 the Department of Children and Families whose duties include the  
 29 investigation of abuse, neglect, exploitation, fraud, theft, or

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

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30 other criminal activities, personnel of the Department of Health  
 31 whose duties are to support the investigation of child abuse or  
 32 neglect, and personnel of the Department of Revenue or local  
 33 governments whose responsibilities include revenue collection  
 34 and enforcement or child support enforcement; the home  
 35 addresses, telephone numbers, social security numbers,  
 36 photographs, dates of birth, and places of employment of the  
 37 spouses and children of such personnel; and the names and  
 38 locations of schools and day care facilities attended by the  
 39 children of such personnel are exempt from s. 119.07(1).  
 40 (II) The names of the spouses and children of active or  
 41 former sworn or civilian law enforcement personnel and the other  
 42 specified agency personnel identified in sub-sub-paragraph  
 43 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 44 State Constitution.  
 45 (III) Sub-sub-paragraph (II) is subject to the Open  
 46 Government Sunset Review Act in accordance with s. 119.15, and  
 47 shall stand repealed on October 2, 2018, unless reviewed and  
 48 saved from repeal through reenactment by the Legislature.  
 49 b. The home addresses, telephone numbers, dates of birth,  
 50 and photographs of firefighters certified in compliance with s.  
 51 633.408; the home addresses, telephone numbers, photographs,  
 52 dates of birth, and places of employment of the spouses and  
 53 children of such firefighters; and the names and locations of  
 54 schools and day care facilities attended by the children of such  
 55 firefighters are exempt from s. 119.07(1).  
 56 c. The home addresses, dates of birth, and telephone  
 57 numbers of current or former justices of the Supreme Court,  
 58 district court of appeal judges, circuit court judges, and

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

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59 county court judges; the home addresses, telephone numbers,  
60 dates of birth, and places of employment of the spouses and  
61 children of current or former justices and judges; and the names  
62 and locations of schools and day care facilities attended by the  
63 children of current or former justices and judges are exempt  
64 from s. 119.07(1).

65 d. (I) The home addresses, telephone numbers, social  
66 security numbers, dates of birth, and photographs of current or  
67 former state attorneys, assistant state attorneys, statewide  
68 prosecutors, or assistant statewide prosecutors; the home  
69 addresses, telephone numbers, social security numbers,  
70 photographs, dates of birth, and places of employment of the  
71 spouses and children of current or former state attorneys,  
72 assistant state attorneys, statewide prosecutors, or assistant  
73 statewide prosecutors; and the names and locations of schools  
74 and day care facilities attended by the children of current or  
75 former state attorneys, assistant state attorneys, statewide  
76 prosecutors, or assistant statewide prosecutors are exempt from  
77 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

78 (II) The names of the spouses and children of current or  
79 former state attorneys, assistant state attorneys, statewide  
80 prosecutors, or assistant statewide prosecutors are exempt from  
81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

82 (III) Sub-sub-subparagraph (II) is subject to the Open  
83 Government Sunset Review Act in accordance with s. 119.15, and  
84 shall stand repealed on October 2, 2018, unless reviewed and  
85 saved from repeal through reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone  
87 numbers of general magistrates, special magistrates, judges of

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

110 f. The home addresses, telephone numbers, dates of birth,  
111 and photographs of current or former human resource, labor  
112 relations, or employee relations directors, assistant directors,  
113 managers, or assistant managers of any local government agency  
114 or water management district whose duties include hiring and  
115 firing employees, labor contract negotiation, administration, or  
116 other personnel-related duties; the names, home addresses,

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117 telephone numbers, dates of birth, and places of employment of  
 118 the spouses and children of such personnel; and the names and  
 119 locations of schools and day care facilities attended by the  
 120 children of such personnel are exempt from s. 119.07(1) and s.  
 121 24(a), Art. I of the State Constitution.

122 g. The home addresses, telephone numbers, dates of birth,  
 123 and photographs of current or former code enforcement officers;  
 124 the names, home addresses, telephone numbers, dates of birth,  
 125 and places of employment of the spouses and children of such  
 126 personnel; and the names and locations of schools and day care  
 127 facilities attended by the children of such personnel are exempt  
 128 from s. 119.07(1) and s. 24(a), Art. I of the State  
 129 Constitution.

130 h. The home addresses, telephone numbers, places of  
 131 employment, dates of birth, and photographs of current or former  
 132 guardians ad litem, as defined in s. 39.820; the names, home  
 133 addresses, telephone numbers, dates of birth, and places of  
 134 employment of the spouses and children of such persons; and the  
 135 names and locations of schools and day care facilities attended  
 136 by the children of such persons are exempt from s. 119.07(1) and  
 137 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 138 litem provides a written statement that the guardian ad litem  
 139 has made reasonable efforts to protect such information from  
 140 being accessible through other means available to the public.

141 i. The home addresses, telephone numbers, dates of birth,  
 142 and photographs of current or former juvenile probation  
 143 officers, juvenile probation supervisors, detention  
 144 superintendents, assistant detention superintendents, juvenile  
 145 justice detention officers I and II, juvenile justice detention

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146 officer supervisors, juvenile justice residential officers,  
 147 juvenile justice residential officer supervisors I and II,  
 148 juvenile justice counselors, juvenile justice counselor  
 149 supervisors, human services counselor administrators, senior  
 150 human services counselor administrators, rehabilitation  
 151 therapists, and social services counselors of the Department of  
 152 Juvenile Justice; the names, home addresses, telephone numbers,  
 153 dates of birth, and places of employment of spouses and children  
 154 of such personnel; and the names and locations of schools and  
 155 day care facilities attended by the children of such personnel  
 156 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 157 Constitution.

158 j.(I) The home addresses, telephone numbers, dates of  
 159 birth, and photographs of current or former public defenders,  
 160 assistant public defenders, criminal conflict and civil regional  
 161 counsel, and assistant criminal conflict and civil regional  
 162 counsel; the home addresses, telephone numbers, dates of birth,  
 163 and places of employment of the spouses and children of such  
 164 defenders or counsel; and the names and locations of schools and  
 165 day care facilities attended by the children of such defenders  
 166 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 167 the State Constitution.

168 (II) The names of the spouses and children of the specified  
 169 agency personnel identified in sub-sub-subparagraph (I) are  
 170 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 171 Constitution. This sub-sub-subparagraph is subject to the Open  
 172 Government Sunset Review Act in accordance with s. 119.15 and  
 173 shall stand repealed on October 2, 2019, unless reviewed and  
 174 saved from repeal through reenactment by the Legislature.

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

190 1. The home addresses and telephone numbers of county tax  
 191 collectors; the names, home addresses, telephone numbers, and  
 192 places of employment of the spouses and children of such tax  
 193 collectors; and the names and locations of schools and day care  
 194 facilities attended by the children of such tax collectors are  
 195 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 196 Constitution if the county tax collector has made reasonable  
 197 efforts to protect such information from being accessible  
 198 through other means available to the public. This sub-  
 199 subparagraph is subject to the Open Government Sunset Review Act  
 200 in accordance with s. 119.15 and shall stand repealed on October  
 201 2, 2017, unless reviewed and saved from repeal through  
 202 reenactment by the Legislature.

203 3. An agency that is the custodian of the information

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204 specified in subparagraph 2. and that is not the employer of the  
 205 officer, employee, justice, judge, or other person specified in  
 206 subparagraph 2. shall maintain the exempt status of that  
 207 information only if the officer, employee, justice, judge, other  
 208 person, or employing agency of the designated employee submits a  
 209 written request for maintenance of the exemption to the  
 210 custodial agency.

211 4. The exemptions in this paragraph apply to information  
 212 held by an agency before, on, or after the effective date of the  
 213 exemption.

214 5. This paragraph is subject to the Open Government Sunset  
 215 Review Act in accordance with s. 119.15, and shall stand  
 216 repealed on October 2, 2017, unless reviewed and saved from  
 217 repeal through reenactment by the Legislature.

218 Section 2. The Legislature finds that it is a public  
 219 necessity that the names of the spouses and children of current  
 220 or former public defenders, assistant public defenders, criminal  
 221 conflict and civil regional counsel, and assistant criminal  
 222 conflict and civil regional counsel be made exempt from s.  
 223 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 224 State Constitution. Public defenders, assistant public  
 225 defenders, criminal conflict and civil regional counsel, and  
 226 assistant criminal conflict and civil regional counsel personnel  
 227 in this state perform a variety of important duties that ensure  
 228 public safety and welfare and encourage safe and civil  
 229 communities. These persons work with felons, many of whom have  
 230 committed violent crimes. As a result of their duties, such  
 231 personnel often come in close contact with individuals who not  
 232 only may be a threat to these personnel, but who might seek to

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233 take revenge against them by harming their spouses and children.  
234 These attorneys also interact with the victims of crime.  
235 Allowing access to the names of the spouses and children of  
236 current or former public defenders, assistant public defenders,  
237 criminal conflict and civil regional counsel, and assistant  
238 criminal conflict and civil regional counsel provides a means by  
239 which individuals who have been investigated, arrested,  
240 interrogated, or incarcerated can identify and cause physical or  
241 emotional harm to these spouses and children. In addition,  
242 criminal conflict and civil regional counsel and their  
243 assistants provide representation in sensitive civil matters,  
244 such as those in which a person's parental rights may be  
245 terminated based on allegations of perpetrating abuse and  
246 neglect against a child. By providing legal representation in  
247 criminal and civil matters, these attorneys provide a valuable  
248 service. The Legislature therefore finds that the harm that may  
249 result from the release of the names of spouses and children of  
250 current or former public defenders, assistant public defenders,  
251 criminal conflict and civil regional counsel, and assistant  
252 criminal conflict and civil regional counsel outweighs any  
253 public benefit that may be derived from the disclosure of the  
254 information.

255 Section 3. This act shall take effect October 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 238  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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)

1/16/2014

Meeting Date

Topic PUBLIC RECORDS

Bill Number 238  
*(if applicable)*

Name SHELDON GUSKY

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

Job Title EXECUTIVE DIRECTOR

Address 103 NORTH GADSDEN ST

Phone 850.488.6850

TALLAHASSEE FL 32301  
City State Zip

E-mail SGUSKY@FLPDA.ORG

Speaking:  For  Against  Information

Representing FLORIDA PUBLIC DEFENDER ASSOCIATION, INC.

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 ARTHENIA L. JOYNER**

19th District

**COMMITTEES:**  
Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on General  
Government  
Ethics and Elections  
Health Policy  
Judiciary  
Transportation

**SELECT COMMITTEE:**  
Select Committee on Indian River Lagoon  
and Lake Okeechobee Basin

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

January 16, 2014

Senator Jeremy Ring, Chair  
Senate Committee on Governmental Oversight and Accountability  
525 Knott  
Tallahassee, FL 32399

Dear Mr. Chair:

This is to request that my Legislative Assistant, Randi Rosete, be permitted to present CS/Senate Bill 238, Public Records/Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel. Allowing my assistant to present this bill will be greatly appreciated since I will not be able to personally present it due to maintaining quorum in the Committee on Transportation.

Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner  
Senator, District 19

ALJ/rr

**REPLY TO:**

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ARTHENIA L. JOYNER**  
19th District

**COMMITTEES:**  
Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on General  
Government  
Ethics and Elections  
Health Policy  
Judiciary  
Transportation

**SELECT COMMITTEE:**  
Select Committee on Indian River Lagoon  
and Lake Okeechobee Basin

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

November 4, 2013

Senator Jeremy Ring, Chairman  
Senate Committee on Governmental Oversight and Accountability  
525 Knott Building  
404 S. Street  
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

This is to request that CS/Senate Bill 238 related to Public Records – Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel be placed on the agenda for the Committee on Governmental Oversight and Accountability. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner  
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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

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

---

BILL: SB 256

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Forensic Behavioral Health Evaluation

DATE: January 13, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 256 makes forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., confidential and exempt from public records requirements.

The bill provides a statement of public necessity for the exemption as required by the State Constitution. Because the exemption applies only to court records, the Open Government Sunset Review Act does not apply.

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

**II. Present Situation:**

**Public Records Laws**

The Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> That constitutional provision took effect on July 1, 1993, and 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.<sup>3</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>4</sup>

---

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

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

<sup>3</sup> FLA. CONST., art. I, s. 24(a).

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

Although the state Public Records Act<sup>5</sup> also guarantees every person's right to inspect and copy public records,<sup>6</sup> the Public Records Act does not apply to the judicial and legislative branches.<sup>7</sup> Public access to court records is instead governed by the State Constitution<sup>8</sup> and by judicial rules.<sup>9</sup>

The State Constitution provides that only the Legislature may create an exemption to public records requirements.<sup>10</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

Although a public records exemption created after the effective date of the constitutional requirements must comply with such requirements, any existing exemptions at the time the constitutional requirements took effect were grandfathered in without being subject to such requirements.<sup>14</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions;<sup>15</sup> however, the Act does not apply to exemptions that apply only to court or legislative records.<sup>16</sup>

---

<sup>5</sup> Chapter 119, F.S.

<sup>6</sup> 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."

<sup>7</sup> See s. 119.011(2), F.S., and *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

<sup>8</sup> See *supra* note 1.

<sup>9</sup> Florida Rule of Judicial Administration 2.420, specifies provisions relating to public access of judicial branch records, including exemptions for certain types of records. Any additional exemptions may only be created by the Legislature (*see* FLA. CONST., art. I, s. 24(c)-(d)).

<sup>10</sup> 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).

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

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

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

<sup>14</sup> See FLA. CONST., art. I, s. 24(d). Many of the public records exemptions in Florida Rule of Judicial Administration 2.420 were such grandfathered exemptions.

<sup>15</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.).

<sup>16</sup> Section 119.15(2), F.S.

## Forensic Mental Health<sup>17</sup>

### *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, intellectual disability, 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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

### *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 intellectual disability or autism. Defendants with intellectual disability or autism must be evaluated by at least one expert with expertise in evaluating persons with intellectual disability or autism in order to evaluate the mental condition of the defendant.<sup>21</sup> A defendant is considered incompetent to proceed if the expert finds that the defendant:

- Meets the definition of intellectual disability or autism;

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<sup>17</sup> 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).

<sup>18</sup> s. 916.12(2), F.S.

<sup>19</sup> s. 916.13(1), F.S. *See also*, s. 916.302, F.S.

<sup>20</sup> *See* s. 916.107(1)(a), F.S.

<sup>21</sup> 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; or
- Has no rational and factual understanding of the proceedings.<sup>22</sup>

If the expert finds that the defendant is incompetent to proceed due to the defendant's intellectual disability or autism, the expert must prepare a report for the court recommending training for the defendant in order to attain competency.<sup>23</sup> Individuals charged with a felony and found incompetent to proceed due to intellectual disability or autism are committed to APD for appropriate training.<sup>24</sup> In certain circumstances, the court may order the conditional release of a defendant found incompetent to proceed due to intellectual disability or autism based on an approved plan for providing community-based training.<sup>25</sup>

### ***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.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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<sup>22</sup> s. 916.3012, F.S.

<sup>23</sup> s. 916.3012(4), F.S.

<sup>24</sup> s. 916.302, F.S.

<sup>25</sup> s. 916.304, F.S.

<sup>26</sup> s. 916.13, F.S.

<sup>27</sup> s. 916.17, F.S.

<sup>28</sup> 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.

<sup>29</sup> Rule 3.212, Fla.R.Crim.P.

<sup>30</sup> *Id.*

### ***Confidentiality of Forensic Behavioral Health Evaluations***

Current law provides that clinical records<sup>31</sup> of a forensic client<sup>32</sup> charged with a crime are confidential and exempt from public records requirements.<sup>33</sup> However, current law does not provide a specific public records exemption for forensic behavioral health evaluations filed with a court.<sup>34</sup>

A court may order records be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for court records.<sup>35</sup>

### **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.

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 that 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 ensure 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 could 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

<sup>31</sup> Such clinical records may pertain to health information, medical treatment, or evaluations of such a forensic client (*see* s. 916.107, F.S.).

<sup>32</sup> Section 916.106(9), F.S., defines “forensic client” to mean a criminal defendant who has been committed to the Department of Children and Families or to the Agency for Persons with Disabilities because he or she has been:

- Adjudicated incompetent,
- Adjudicated not guilty by reason of insanity, or
- Determined to be incompetent to proceed.

<sup>33</sup> Section 916.107(8), F.S.

<sup>34</sup> *Confidentiality of Behavioral Health Records, Judicial Branch Legislative Issue (2014)*, Office of the State Courts Administrator (on file with the Senate Governmental Oversight and Accountability Committee).

<sup>35</sup> *See* FLA. CONST., art. I, s. 24(c) and *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011).

allows courts to effectively and efficiently make decisions relating to the competency of individuals who interact with the state courts system.

The bill takes effect July 1, 2014.

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

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

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 State 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 State 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:**

The Office of the State Courts Administrator (OSCA) anticipates that the bill will help to reduce court workload related to disposing of defense motions to protect forensic behavioral health evaluation information records. The bill's effect would make the

defense motions unnecessary. OSCA is unable to quantify the fiscal impact resulting from the workload reduction due to the unavailability of data.<sup>36</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Current Public Records Exemption: Clinical Records of Forensic Clients

Current law provides a public records exemption for clinical records of medical treatment or evaluations of certain incompetent or insane criminal defendants. It is unclear whether that exemption would provide any overlapping protection to information protected by this bill.

If the existing exemption does not provide such overlapping protection and this bill passes, it is unclear to what extent the information protected by this bill would be confidential if held by an entity other than the court.

If the existing exemption does provide such overlapping protection and this bill passes, it is unclear whether the existing exemption should be modified to ensure conformity.

**VIII. Statutes Affected:**

This bill creates section 916.1065 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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<sup>36</sup> Office of the State Courts Administrator 2014 Judicial Impact Statement, December 3, 2013 (on file with the Senate Criminal Justice Committee).

By Senator Garcia

38-00335-14

2014256\_\_

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 providing a statement of public necessity; providing  
 8 an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Section 916.1065, Florida Statutes, is created  
 13 to read:  
 14 916.1065 Confidentiality of forensic behavioral health  
 15 evaluations.  
 16 (1) A forensic behavioral health evaluation filed with the  
 17 court under this chapter is confidential and exempt from s.  
 18 24(a), Art. I of the State Constitution.  
 19 (2) As used in this section, the term "forensic behavioral  
 20 health evaluation" means any record, including supporting  
 21 documentation, derived from a competency, substance abuse,  
 22 psychosexual, psychological, psychiatric, psychosocial,  
 23 cognitive impairment, sanity, or other mental health evaluation  
 24 of an individual.  
 25 Section 2. The Legislature finds that it is a public  
 26 necessity that forensic behavioral health evaluations filed with  
 27 the court pursuant to chapter 916, Florida Statutes, be  
 28 confidential and exempt from disclosure under s. 24(a), Article  
 29 I of the State Constitution. The personal health of an

Page 1 of 2

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38-00335-14

2014256\_\_

30 individual and any treatment that he or she receives is an  
 31 intensely private matter. An individual's forensic behavioral  
 32 health evaluation should not be made public merely because it is  
 33 filed with the court. Protecting forensic behavioral health  
 34 evaluations is necessary to ensure the health care privacy  
 35 rights of all individuals. Making these evaluations confidential  
 36 and exempt will protect information of a sensitive personal  
 37 nature, the release of which could cause unwarranted damage to  
 38 the reputation of an individual. Further, the knowledge that  
 39 sensitive personal information is subject to disclosure could  
 40 have a chilling effect on mental health experts who conduct the  
 41 evaluations for use by the court. Therefore, making these  
 42 evaluations confidential and exempt allows courts to effectively  
 43 and efficiently make decisions relating to the competency of  
 44 individuals who interact with the state courts system.  
 45 Section 3. This act shall take effect July 1, 2014.

Page 2 of 2

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## 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

38th District

January 15, 2014

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

Dear Chairman Ring:

Due to a scheduling conflict, I will not be able to present my bill *SB 256 Forensic Behavioral Health Evaluation*, at your committee meeting on Thursday, January 16, 2014. 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](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## 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, Chair

### SENATOR RENE GARCIA

38th District

December 19, 2013

The Honorable Jeremy Ring  
Chair, Government 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 256 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:

- 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

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

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

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BILL: SM 118

INTRODUCER: Senator Hays

SUBJECT: National Retail Sales Tax

DATE: January 7, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SM 118 urges the United States Congress to enact H.R. 25, the Fair Tax Act of 2013, which would impose a national retail sales tax and eliminate the federal personal income tax, the alternative minimum tax, the estate tax, the gift tax, the capital gains tax, the federal corporate income tax, the self-employment tax, and the employee and employer payroll tax.

**II. Present Situation:**

**Background**

**Sixteenth Amendment<sup>1</sup>**

In 1913, the 16th Amendment to the United States Constitution was ratified, establishing the framework for our modern federal tax system. Specifically, the 16th Amendment grants Congress the power to lay and collect taxes on “income, from whatever source derived,” and eliminates the previous requirement that all direct federal taxes be apportioned by population.

In 1939, the Internal Revenue Code (IRC) was created to simplify the process for making changes to existing tax statutes. Previously, any statutory revisions to existing law required the passage of an entirely new set of tax provisions. With the creation of the IRC, revisions to existing law would only demand changes to be made to the affected section. Since 1939, the IRC has been recodified on two occasions: 1954 and 1986. Presently, the federal government is operating under the Internal Revenue Code of 1986, as amended.

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<sup>1</sup> Information in this section was adapted from Shirley Dennis Escoffier & Karen A. Fortin, Taxation for Decision Makers, 3-4 (Thompson South Western 2008).

## **Federal Taxes**<sup>2</sup>

### **Federal Income Tax**

Federal income tax includes income taxed at both the individual and corporate level. Notable variations in the governing rules apply to each category. An individual taxpayer's liability is determined by the greater of "(1) regular individual income tax liability reduced by credits allowed against the regular tax, or (2) [alternative] minimum tax reduced by credits allowed against the minimum tax."<sup>3</sup> Depending on the applicable tax standard, a different rate schedule will apply.

Determining regular tax liability requires calculating taxable income, defined as "the taxpayer's total gross income less certain exclusions, exemptions, and deductions."<sup>4</sup> An individual's adjusted gross income (AGI) is calculated by subtracting "above-the-line-deductions," such as trade or business expenses, moving expenses, and capital losses, from the individual's gross income.<sup>5</sup> The AGI is then reduced by the personal exemption deduction and by either the appropriate standard deduction or itemized deduction amount to arrive to the taxable income figure.<sup>6</sup> Marginal tax rates based on corresponding ordinary income brackets are then applied to the taxable income, with the maximum rate set at 39.6 percent. Note that most gain acquired from a capital asset is taxed under a separate rate structure, with the maximum rate set at 20 percent.<sup>7</sup>

Additionally, federal law requires that the alternative minimum tax also be calculated to determine if an individual's regular tax liability falls below the alternative minimum tax liability amount. If so, then an alternative minimum tax will be imposed to account for the difference between the taxable income and alternative minimum taxable income (AMTI) amount.<sup>8</sup> When calculating the AMTI, the taxpayer is precluded from taking a personal exemption, standard deduction, and certain itemized deductions, such as state and local taxes paid, to reduce his or her overall income.<sup>9</sup> The AMTI is then reduced by the appropriate exemption amount. The difference, if any,<sup>10</sup> is the taxable excess, which serves as the basis for determining the taxpayer's tentative minimum tax liability.

At the corporate level, regular income tax liability is calculated in a similar way. Numerous rules exist that are unique to corporations, such as the dividends received deduction (DRD) provision

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<sup>2</sup> Staff of J. Comm. on Taxation, 113<sup>th</sup> Cong., Overview of the Federal Tax System as in Effect for 2013 (JCX-2-13R), (Jan. 8, 2013), available at <https://www.jct.gov/publications.html?func=startdown&id=4498> (select download link to access pdf file) (last visited December 2, 2013).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 2.

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

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 7. Although historically classified as ordinary income, the Jobs and Growth Tax Relief Reconciliation Act of 2003 allows for dividends to be taxed at favorable capital gains rate subject to certain conditions.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 6. ("AMTI is the taxpayer's taxable income increased by the taxpayer's tax preferences and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.")

<sup>10</sup> *Id.* Note that if there is no difference then the individual taxpayer is subject to federal tax rules governing regular tax liability.

that allows a corporate shareholder to deduct, at a minimum, 70 percent of the dividend it receives.<sup>11</sup> The effect of this provision is to mitigate the effects of a triple taxation.<sup>12</sup> However, a distributing corporation is restricted from deducting the dividend amount paid to shareholders.<sup>13</sup> Furthermore, unlike individuals, a separate tax rate structure does not apply for corporate capital gains. Thus, corporate capital gains will be taxed at the same schedule as ordinary corporate income tax rates.<sup>14</sup>

Corporations are also required to calculate an alternative minimum tax. Like the individual taxpayer, a corporation is subject to the alternative minimum tax to the extent that it exceeds its regular income tax liability.<sup>15</sup> A corporation's alternative minimum taxable income is calculated by increasing the corporation's regular taxable income by disallowing favorable tax treatment on certain items. Again, the effect is to negate the deferral of income that would normally take place under the regular tax treatment of those items. The alternative minimum taxable income is then increased by 75 percent of the difference between a corporation's adjusted current earnings and its alternative minimum taxable income.<sup>16</sup> That amount is then reduced by the applicable exemption amount, if one is applicable.<sup>17</sup> The leftover amount is then taxed at a flat rate of 20 percent.<sup>18</sup>

### **Estate and Gift Tax**

In the United States, a gift tax is imposed on the transfer of any property by gift that is made by a U.S. citizen or resident.<sup>19</sup> The gift tax is imposed at the donor level and is based on the fair market value of the property transferred. Deductions are allowed for certain gifts that are made to spouses and charities. As of 2013, annual gifts of \$14,000 or less per donor and per donee generally will not be subject to any tax.

An estate tax is imposed on the taxable estate of any person who was a citizen or resident of the United States at the time of death. A nonresident's estate may also be subject to the estate tax if certain property belonging to the decedent is located in the United States at the time of death. Similar to the gift tax, the tax is imposed based on the fair market value of the property at the time of death. In its simplest form, the taxable estate generally will equal the value of the worldwide gross estate reduced by allowable deductions, such as marital deductions and charitable bequests.

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<sup>11</sup> *Id.* at 10 and United States Department of the Treasury, Internal Revenue Service, Corporations (Publication 542, Rev. March 2012), available at <http://www.irs.gov/pub/irs-pdf/p542.pdf> (last visited December 2, 2013).

<sup>12</sup> Note that without this deduction, corporate profits would be taxed first to the corporation that earned them, again to the corporate shareholder receiving the distribution, and again to the individual shareholder upon receipt of a distribution from the second corporation.

<sup>13</sup> Staff on J. Comm. on Taxation, *supra* note 2, at 10.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.* at 12.

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

<sup>17</sup> Note that the exemption amount is phased out for corporations with income above certain thresholds, and is completely phased out for corporations with alternative minimum taxable income of \$310,000 or more. *Id.* at n. 19.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 14.

The gift and estate taxes are based on the same graduated rate schedule, with a maximum tax rate of 40 percent. In addition to the gift and estate taxes, a transfer tax may also be imposed on generation-skipping transfers. As a general rule, this tax is imposed on transfers in excess of \$5.25 million to a beneficiary in more than one generation below that of the transferor at a flat rate of 40 percent.

### **Employment Tax**

The Federal Insurance Contributions Act (FICA) imposes taxes on both employers and employees.<sup>20</sup> Under the act, employers are required to pay the following: “(1) the old, age survivors, and disability insurance (“OASDI”) tax equal to 6.2 percent of covered wages up to the taxable wage base (\$113,700 in 2013); and (2) the Medical hospital insurance (“HI”) tax amount equal to 1.45 percent of covered wages.”<sup>21</sup> In addition, employers are required to pay a federal unemployment insurance payroll tax of generally 0.6 percent of the total wages of each employee, up to \$7,000, on covered employment.<sup>22</sup>

Employees are also subject to a federal withholding tax equal to the amount of FICA tax imposed on the employer. Note that the withholding tax does not include the employer’s obligation to pay unemployment insurance tax. Lastly, the Self-Employment Contributions Act (SECA) requires that taxes be imposed on the net income derived from self-employment. The general rule is that the OASDI and HI tax rate portions will be paid by the self-employed individual at the combined employer and employee rates as required under FICA.<sup>23</sup>

### **Fair Tax Act of 2013**

Below is a summary describing H.R. 25, The Fair Tax Act of 2013, prepared by the Congressional Research Service:

This legislation proposes to repeal the individual income tax, the corporate income tax, all payroll taxes, the self-employment tax, and the estate and gift taxes. These taxes would effectively be replaced with a 23% (tax-inclusive, meaning that the rate is a proportion of the after-tax rather than the pre-tax value) national retail sales tax. The tax-inclusive retail sales tax would equal 23% of the sum of the sales price of an item and the amount of the retail sales tax. Every family would receive a rebate of the sales tax on spending amounts up to the federal poverty level (plus an extra amount to prevent any marriage penalty). The Social Security Administration would provide a monthly sales tax rebate to registered qualified families. The 23% national retail sales [tax] would not be levied on exports. The sales tax would be separately stated and charged. Social Security and Medicare benefits would remain the same with payroll tax revenue replaced by some of the revenue from the retail sales tax. States could elect to collect the national retail sales tax on behalf of the federal government in exchange for a fee. Taxpayer rights provisions are incorporated into the act. The sales tax would sunset at the end of a seven-

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<sup>20</sup> *Id.* at 16.

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

<sup>22</sup> The unemployment insurance payroll tax is 6 percent; however, most states receive a credit of 5.4 percent, making the effective tax rate 0.6 percent.

<sup>23</sup> *Id.* at 16.

year period beginning on the enactment of this act if the Sixteenth Amendment is not repealed. This amendment provided Congress the ‘power to lay and collect taxes on income.’<sup>24</sup>

### III. Effect of Proposed Changes:

**Resolution:** SM 118 urges Congress to enact H.R. 25, the Fair Tax Act of 2013, which would impose a national retail sales tax and eliminate the federal personal income tax, the alternative minimum tax, the estate tax, the gift tax, the capital gains tax, the federal corporate income tax, the self-employment tax, and the employee and employer payroll tax.

**Rationale for Resolution:** SM 118 stipulates that the current federal taxation regime retards economic growth and the country’s international competitiveness. It further states that the current system is inequitable and imposes unnecessary administrative and compliance costs on both individual and business taxpayers. As such, SM 118 recommends the repeal of the 16th Amendment to the federal constitution.

In the alternative, SM 118 calls for the imposition of a national sales tax. It provides that the imposition of such tax would promote fairness and reduce administrative burdens faced by American taxpayers. SM 118 recommends that Congress consider administering and collecting the national sales tax at the state level in return for a reasonable administration fee to the states.

**Circulation:** Copies of this memorial are to be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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<sup>24</sup> Sherlock, Molly F., Cong. Research Serv., R43060, Tax Reform in the 113th Congress: An Overview of Proposals (May 6, 2013), available at <http://www.fas.org/sgp/crs/misc/R43060.pdf> (last visited December 2, 2013).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Hays

11-00161A-14

2014118\_\_

## Senate Memorial

A memorial to the Congress of the United States, urging Congress to repeal all taxes on income and enact a national retail sales tax as specified in H.R. 25, the Fair Tax Act of 2013.

WHEREAS, our Founding Fathers, being mindful that history has demonstrated that income taxes give government too much power over citizens, specifically forbade such taxes in the Constitution of the United States, and

WHEREAS, Alexander Hamilton wrote in The Federalist No. 21 that "it is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess," and

WHEREAS, the current income tax system requires individual taxpayers to prepare annual tax returns using many complicated forms, causing innocent errors that are heavily punished, and

WHEREAS, the current income tax system actually penalizes marriage, and

WHEREAS, the federal income tax:

(1) Retards economic growth and has reduced the standard of living of the American public;

(2) Impedes the international competitiveness of United States industry;

(3) Reduces savings and investment in the United States by taxing income multiple times;

(4) Slows the capital formation necessary for real wages to steadily increase;

(5) Lowers productivity;

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11-00161A-14

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(6) Imposes unacceptable and unnecessary administrative and compliance costs on individual and business taxpayers;

(7) Is unfair and inequitable;

(8) Unnecessarily intrudes upon the privacy and civil rights of United States citizens;

(9) Hides the true costs of government by embedding taxes in the costs of everything that Americans buy;

(10) Is not being complied with at satisfactory levels and, therefore, raises the tax burden on law-abiding citizens; and

(11) Impedes upward social mobility, and

WHEREAS, federal payroll taxes, including social security and Medicare payroll taxes and self-employment taxes:

(1) Raise the cost of employment;

(2) Destroy jobs and cause unemployment; and

(3) Have a disproportionately adverse impact on lower-income Americans, and

WHEREAS, the federal estate and gift taxes:

(1) Force family businesses and farms to be sold by the family in order to pay taxes;

(2) Discourage capital formation and entrepreneurship;

(3) Foster the continued dominance of large enterprises over small family-owned companies and farms; and

(4) Impose unacceptably high tax-planning costs on small businesses and farms, and

WHEREAS, a broad-based national sales tax on goods and services purchased for final consumption:

(1) Is similar in many respects to the sales and use taxes that are authorized in 45 of the 50 states;

(2) Will promote savings and investment;

Page 2 of 4

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

11-00161A-14

2014118\_\_

59 (3) Will promote fairness;  
 60 (4) Will promote economic growth;  
 61 (5) Will raise the standard of living;  
 62 (6) Will enhance productivity and international  
 63 competitiveness;  
 64 (7) Will reduce administrative burdens on the American  
 65 taxpayer;  
 66 (8) Will improve upward social mobility; and  
 67 (9) Will respect the privacy interests and civil rights of  
 68 taxpayers, and  
 69 WHEREAS, Congress should consider when implementing the  
 70 administration of a national sales tax that:  
 71 (1) Most of the practical experience in administering sales  
 72 taxes is found at the state level;  
 73 (2) It is desirable to harmonize federal and state  
 74 collection and enforcement efforts to the maximum extent  
 75 possible;  
 76 (3) It is sound tax administration policy to foster  
 77 administration and collection of the federal sales tax at the  
 78 state level in return for a reasonable administration fee to the  
 79 states; and  
 80 (4) A business that must collect and remit taxes should  
 81 receive reasonable compensation for the cost of doing so, and  
 82 WHEREAS, the 16th Amendment to the United States  
 83 Constitution should be repealed, NOW, THEREFORE,  
 84  
 85 Be It Resolved by the Legislature of the State of Florida:  
 86  
 87 That the Legislature of the State of Florida, with all due

Page 3 of 4

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11-00161A-14

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88 respect, does hereby urge the United States Congress to enact  
 89 H.R. 25, the Fair Tax Act of 2013, which eliminates the personal  
 90 income tax, the alternative minimum tax, the inheritance tax,  
 91 the gift tax, the capital gains tax, the corporate income tax,  
 92 the self-employment tax, and the employee and employer payroll  
 93 tax and replaces them with a national retail sales tax.  
 94 BE IT FURTHER RESOLVED that copies of this memorial be  
 95 dispatched to the President of the United States, to the  
 96 President of the United States Senate, to the Speaker of the  
 97 United States House of Representatives, and to each member of  
 98 the Florida delegation to the United States Congress.

Page 4 of 4

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/18/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 118  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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

**SENATOR ALAN HAYS**  
11th District

### COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*  
Children, Families, and Elder Affairs, *Vice Chair*  
Governmental Oversight and Accountability, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Criminal and Civil Justice  
Banking and Insurance  
Commerce and Tourism

### JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining, *Co-Chair*  
Joint Legislative Auditing Committee  
Joint Legislative Budget Commission

# MEMORANDUM

**To:** Senator Jeremy Ring, Chair  
Governmental Oversight and Accountability Committee  
CC: Joe McVaney, Staff Director  
Bethany Jones, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to Agenda SM 118 – National Retail Sales Tax

**Date:** December 9, 2013

---

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD  
State Senator, District 11

### REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: [www.flsenate.gov](http://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: SB 388

INTRODUCER: Senator Bean

SUBJECT: Public Retirement Plans

DATE: January 7, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	<b>Favorable</b>
2.			CA	
3.			AFT	
4.			AP	

---

**I. Summary:**

SB 388 provides that a consolidated government that has entered into an interlocal agreement to provide police protection services to another incorporated municipality is eligible to receive the premium taxes reported for the other municipality under certain circumstances. The bill authorizes the municipality receiving the police protection services to enact an ordinance levying the premium tax as provided by law and to distribute those premium tax revenues reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

In 2013, the Revenue Estimating Conference estimated that identical legislation would have had an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

**II. Present Situation:**

**Municipal Police Pensions**

Chapter 185, F.S., provides funding for municipal police officers' pension plans. It provides for a "uniform retirement system" with defined benefit retirement plans for municipal police officers and sets standards for the operation and funding of these pension systems.<sup>1</sup> Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of .85 percent of the gross amount of receipts of premiums from policyholders on casualty insurance policies covering property within its corporate limits.<sup>2</sup> Revenues from this excise tax are one of the funding sources for police officers' pension plans. Currently, a municipality is eligible to receive state premium taxes (or excise taxes) only on those premiums for casualty

---

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

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

insurance policies covering property within its municipal limits. A municipality that provides police protection services outside of its municipal limits through an interlocal agreement is not eligible to receive premium tax revenue for casualty policies covering the property where the service is being provided.<sup>3</sup>

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

Chapter 185, F.S., applies only to municipalities organized and established pursuant to the laws of the state, and does not apply to the unincorporated areas of any county or counties or to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

### **Firefighter Pensions**

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

### **Consolidation**

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

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

Consolidation. —The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by

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

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

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

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

special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

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

The voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967, and to date, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. Section 9, of Article VIII, of the Constitution of 1885, establishes the Jacksonville/Duval County consolidated charter. Section 6(e), Art. VIII of the State Constitution provides that Section 9, of Article VIII, of the Constitution of 1885 remained in full force and effect after the adoption of the 1968 revision. The municipalities of Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach are not consolidated with Duval County.

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

**Sections 1 and 2** amend ss. 185.03 and 185.08, F.S., respectively, to allow a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, to receive the distribution of premium tax revenues related to casualty insurance premiums covering property within a non-consolidated municipality with the county's boundaries. The consolidated government must notify the Division of Retirement of the Department of Management Services (division) when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

**Section 3** provides an effective date of July 1, 2014.

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

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

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:**

None.

**C. Trust Funds Restrictions:**

None.

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

In 2013, the Revenue Estimating Conference estimated that identical legislation would have had an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

**B. Private Sector Impact:**

None. Although the bill authorizes a municipality to enact a tax on insurance premiums, the municipal taxes are fully credited against the state taxes on insurance premiums.

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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

**VIII. Statutes Affected:**

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

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

---

By Senator Bean

4-00352A-14

2014388\_\_

1 A bill to be entitled  
 2 An act relating to public retirement plans; amending  
 3 ss. 185.03 and 185.08, F.S.; specifying the  
 4 applicability of ch. 185, F.S., to certain  
 5 consolidated governments; providing that a  
 6 consolidated government that has entered into an  
 7 interlocal agreement to provide police protection  
 8 services to a municipality within its boundaries is  
 9 eligible to receive the premium taxes reported for the  
 10 municipality under certain circumstances; authorizing  
 11 the municipality receiving the police protection  
 12 services to enact an ordinance levying the tax as  
 13 provided by law; including certain consolidated  
 14 governments under provisions authorizing imposition of  
 15 a state excise tax on casualty insurance premiums  
 16 covering certain property; providing an effective  
 17 date.  
 18  
 19 Be It Enacted by the Legislature of the State of Florida:  
 20  
 21 Section 1. Subsection (2) of section 185.03, Florida  
 22 Statutes, is amended to read:  
 23 185.03 Municipal police officers' retirement trust funds;  
 24 creation; applicability of provisions; participation by public  
 25 safety officers.—For any municipality, chapter plan, local law  
 26 municipality, or local law plan under this chapter:  
 27 (2) (a) ~~The provisions of This chapter applies shall apply~~  
 28 only to municipalities organized and established pursuant to the  
 29 laws of the state, and does ~~said provisions shall~~ not apply to

Page 1 of 3

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

4-00352A-14

2014388\_\_

30 the unincorporated areas of a any county or counties ~~nor shall~~  
 31 ~~the provisions hereof apply to a any~~ governmental entity whose  
 32 police officers are eligible to participate in the Florida  
 33 Retirement System.  
 34 (b) With respect to the distribution of premium taxes, a  
 35 single consolidated government consisting of a former county and  
 36 one or more municipalities, consolidated pursuant to s. 3 or s.  
 37 6(e), Art. VIII of the State Constitution, is also eligible to  
 38 participate under this chapter. The consolidated government  
 39 shall notify the division when it has entered into an interlocal  
 40 agreement to provide police services to a municipality within  
 41 its boundaries. The municipality may enact an ordinance levying  
 42 the tax as provided in s. 185.08. Upon being provided copies of  
 43 the interlocal agreement and the municipal ordinance levying the  
 44 tax, the division may distribute any premium taxes reported for  
 45 the municipality to the consolidated government as long as the  
 46 interlocal agreement is in effect.  
 47 Section 2. Subsection (1) of section 185.08, Florida  
 48 Statutes, is amended to read:  
 49 185.08 State excise tax on casualty insurance premiums  
 50 authorized; procedure.—For any municipality, chapter plan, local  
 51 law municipality, or local law plan under this chapter:  
 52 (1) (a) Each incorporated municipality in this state  
 53 described and classified in s. 185.03, as well as each other  
 54 city or town of this state which on July 31, 1953, had a  
 55 lawfully established municipal police officers' retirement trust  
 56 fund or city fund, by whatever name known, providing pension or  
 57 relief benefits to police officers as provided under this  
 58 chapter, may assess and impose on every insurance company,

Page 2 of 3

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4-00352A-14

2014388\_\_

59 corporation, or other insurer now engaged in or carrying on, or  
60 who shall hereafter engage in or carry on, the business of  
61 casualty insurance as shown by records of the Office of  
62 Insurance Regulation of the Financial Services Commission, an  
63 excise tax in addition to any lawful license or excise tax now  
64 levied by each of the ~~said~~ municipalities, respectively,  
65 amounting to .85 percent of the gross amount of receipts of  
66 premiums from policyholders on all premiums collected on  
67 casualty insurance policies covering property within the  
68 corporate limits of such municipalities, respectively.

69 (b) This section applies to a municipality consisting of a  
70 single consolidated government consisting of a former county and  
71 one or more municipalities, consolidated pursuant to s. 3 or s.  
72 6(e), Art. VIII of the State Constitution, and to casualty  
73 insurance policies covering property within the boundaries of  
74 the consolidated government, regardless of whether the  
75 properties are located within one or more separately  
76 incorporated areas within the consolidated government, and  
77 provided the properties are being provided with police  
78 protection services by the consolidated government.

79 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/16/14

Meeting Date

Topic Public Pension

Bill Number 388  
*(if applicable)*

Name Jeremy Branch

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

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

Address 7016 Tommassie Circle  
*Street*

Phone 850-557-8252

Grand Ridge FL 32442  
*City State Zip*

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

Speaking:  For  Against  Information

Representing Jacksonville Police + Five Pension Fund

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)

11/16/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 588  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

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)

# CourtSmart Tag Report

**Room:** KN 412  
**Case:** Senate Governmental Oversight and Accountability

**Type:**  
**Judge:**

**Started:** 1/16/2014 9:01:49 AM  
**Ends:** 1/16/2014 9:25:29 AM  
**Length:** 00:23:41

**9:01:52 AM** Meeting called to order - roll call  
**9:02:10 AM** SB 256 not being considered  
**9:02:29 AM** Tab 1 - SB 264 - Inflation and Deflation (presented by Chris Spencer, Leg. aide)  
**9:03:38 AM** Brian Pitts, Justice-2-Jesus  
**9:06:52 AM** In Debate  
**9:07:51 AM** Senator Hukill  
**9:08:52 AM** Senator Hays  
**9:09:18 AM** Waive close, roll call  
**9:09:48 AM** SB 264 - Report Favorable  
**9:10:11 AM** SB 238 - Public Records/Names of Spouses and Children of Pub. Def. and CCRC (Randi Rosete - Leg. Aide presenting)  
**9:11:09 AM** 690076 (by Sen. Smith)  
**9:11:33 AM** Motion to report as CS (Senator Hays)  
**9:11:54 AM** Roll Call on the CS - Favorable  
**9:12:46 AM** Tab 4 - SM 118 - National Retail Sales Tax (Senator Hays)  
**9:13:59 AM** Brian Pitts, Justice-2-Jesus  
**9:17:02 AM** In Debate  
**9:18:01 AM** Senator Simmons  
**9:21:12 AM** Senator Hays - Close on the bill  
**9:22:48 AM** Roll Call  
**9:23:52 AM** SM 118 Reported Favorable  
**9:24:11 AM** Tab 5 - SB 388 - Public Retirement Plans (Senator Bean)  
**9:25:02 AM** Close Waived -Roll Call  
**9:25:17 AM** SB 388 reported favorable  
**9:25:21 AM** Move to rise