

SB 858 by **MS**; OGSR/Florida Defense Support Task Force

770972 A S RCS GO, Hays Delete L.38 - 50: 03/06 11:27 AM

SB 616 by **Evers**; (Similar to CS/H 7007) Public Records/Toll Facilities

528654 A S RCS GO, Hays Delete L.29: 03/06 11:27 AM

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

751818 A S RS GO, Bradley Delete L.17: 03/06 11:27 AM
551036 SA S RCS GO, Bradley Delete L.18 - 28: 03/06 11:27 AM

SB 642 by **Brandes**; Florida Transportation Corporation Act

SB 506 by **BI**; (Identical to H 7045) OGSR/Florida Insurance Guaranty Association

SB 612 by **Hays**; (Similar to H 0801) Preference in the Award of State Contracts

291682 A S RCS GO, Hays Before L.27: 03/06 11:27 AM
110196 A S RCS GO, Hays Delete L.53 - 54: 03/06 11:27 AM

SB 292 by **Hays**; (Identical to H 0177) Public Records/Prepaid Wireless E911 Fee

674716 D S RCS GO, Hays Delete everything after 03/06 11:27 AM

SB 948 by **Ring**; (Similar to H 0811) Foreign Investments

496202 A S RCS GO, Ring Delete L.46 - 59: 03/06 11:27 AM
531610 A S RCS GO, Ring Delete L.347 - 436: 03/06 11:27 AM

SPB 7064 by **GO**; Public Records and Meetings

978404 A S FAV GO, Ring Delete L.46 - 69: 03/06 11:27 AM

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

MEETING DATE: Thursday, March 6, 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 | SB 858 Military and Veterans Affairs, Space, and Domestic Security | OGSR/Florida Defense Support Task Force; Amending provisions which provide exemptions from public records and public meetings requirements for certain records and meetings of the Florida Defense Support Task Force; saving the exemptions from repeal under the Open Government Sunset Review Act, etc. GO 03/06/2014 Fav/CS | Fav/CS Yeas 9 Nays 0 |
| 2 | SB 616 Evers (Similar CS/H 7007) | Public Records/Toll Facilities; Providing an exemption from public records requirements for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges for the use of toll facilities; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. TR 02/05/2014 Favorable GO 03/06/2014 Fav/CS RC | Fav/CS Yeas 9 Nays 0 |
| 3 | SB 256 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 GO 02/20/2014 Not Considered GO 03/06/2014 Fav/CS RC | Fav/CS Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Thursday, March 6, 2014, 9:00 —11:00 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 4 | SB 642 Brandes | Florida Transportation Corporation Act; Repealing a provision relating to the authority of the Auditor General to conduct audits of transportation corporations authorized under the Florida Transportation Corporation Act; repealing a provision relating to the type, structure, and income of an authorized transportation corporation; repealing a provision relating to the contract between the Department of Transportation and an authorized transportation corporation; repealing a provision relating to the board of directors and advisory directors of an authorized transportation corporation, etc. TR 02/13/2014 Favorable GO 03/06/2014 Favorable | Favorable Yeas 9 Nays 0 |
| 5 | SB 506 Banking and Insurance (Identical H 7045) | OGSR/Florida Insurance Guaranty Association; Amending provisions which provide an exemption from public records for certain records held by the Florida Insurance Guaranty Association; abrogating the scheduled repeal of the exemption, etc. EE 02/03/2014 Favorable GO 03/06/2014 Favorable RC | Favorable Yeas 9 Nays 0 |
| 6 | SB 612 Hays (Similar H 801) | Preference in the Award of State Contracts; Expanding provisions that require an agency, university, college, school district, or other political subdivision of the state to provide preferential consideration to a Florida business in awarding competitively bid contracts to purchase personal property to include the purchase of construction services; requiring counties and municipalities to provide such preferential consideration, etc. GO 03/06/2014 Fav/CS CA JU AP | Fav/CS Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Thursday, March 6, 2014, 9:00 —11:00 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|--|--|--|
| 7 | SB 292 Hays (Identical H 177, Compare CS/H 175, Link S 294) | Public Records/Prepaid Wireless E911 Fee; Providing an exemption from public records requirements for specified information received by the Department of Revenue relating to the prepaid wireless E911 fee; authorizing the department to share such information with the Secretary of Management Services and the E911 Board; including the Department of Revenue as an additional recipient of specified confidential information relating to wireless service; providing for future legislative review and repeal; providing statements of public necessity, etc. CU 01/14/2014 Favorable GO 03/06/2014 Fav/CS RC | Fav/CS Yeas 9 Nays 0 |
| 8 | SB 948 Ring (Similar H 811) | Foreign Investments; Revising the percentage of investments that the State Board of Administration may invest in foreign securities; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; requiring insurers to identify, report, and divest certain assets within a specified period, etc. GO 03/06/2014 Fav/CS AP RC | Fav/CS Yeas 9 Nays 0 |
| Consideration of proposed committee bill: | | | |
| 9 | SPB 7064 | Public Records and Meetings; Revising the general state policy on public records; authorizing a person to make a request to inspect or copy a public record at certain agency offices; providing that public records requests need not be in writing unless otherwise required by law; providing that a party filing an action against certain agencies is not required to serve a copy of a pleading claiming attorney fees on the Department of Financial Services, etc. | Submitted as Committee Bill Yeas 9 Nays 0 |

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 858

INTRODUCER: Governmental Oversight and Accountability Committee and Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: OGSR/Florida Defense Support Task Force

DATE: March 6, 2014 **REVISED:** _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------------|----------------|-----------|----------------------------------|
| <u>Spaulding</u> | <u>Ryon</u> | | MS SPB 7022 as introduced |
| 1. <u>Kim</u> | <u>McVaney</u> | <u>GO</u> | Fav/CS |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 858 is the result of an Open Government Sunset Review performed by the Military and Veterans Affairs, Space, and Domestic Security Committee.

Current law¹ provides public records and public meetings exemptions² to enable the Florida Defense Support Task Force to evaluate the strengths and weaknesses of Florida’s military installations and missions relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense (DoD) Base Realignment and Closure (BRAC) process. BRAC is the process that the DoD has previously used to reorganize its installation infrastructure to more efficiently and effectively support its forces and to reduce defense costs.³ There have been five previous BRACs.⁴ In the FY 2014

¹ Section 288.985(5), F.S.

² Chapter 2009-156, ss. 1-3, Laws of Fla. (creating s. 288.985, F.S., effective July 1, 2009).

³ Pub. Law No. 100-526, 100th Cong. (October 24, 1988); United States Department of Defense Base Realignment and Closure, BRAC Definitions, http://www.defense.gov/brac/definitions_brac2005.html, last viewed January 28, 2014.

⁴ United States Department of Defense Base Realignment and Closure, Prior BRAC Rounds (BRAC 1988, 1991, 1993 & 1995), Executive Summary Fiscal Year (FY) 2012 Budget Estimates, http://comptroller.defense.gov/defbudget/fy2012/budget_justification/pdfs/05_BRAC/OLD_BRAC_Exec_Sum_FY2012_PB.pdf, last viewed January 28, 2014; Defense Base Closure and Realignment Commission, <http://www.brac.gov/>, last viewed January 28, 2014.

Defense Budget Proposal, the DoD proposed a 2015 BRAC,⁵ however, the Consolidated Appropriations Act of 2014 did not include a BRAC provision.⁶

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It 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.⁷ The records of the legislative, executive, and judicial branches are specifically included.⁸ The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.⁹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act¹⁰ guarantees every person's right to inspect and copy any state or local government public record¹¹ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹² The Sunshine Law¹³ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.¹⁴

⁵ United States Department of Defense, Summary of the DoD Fiscal Year 2014 Budget Proposal, <http://www.defense.gov/news/2014budget.pdf>, last viewed January 28, 2014.

⁶ Public Law No: 113-076

⁷ FLA. CONST., art. I, s. 24(a).

⁸ *Id.*

⁹ FLA. CONST., art. I, s. 24(b).

¹⁰ Chapter 119, F.S.

¹¹ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

¹² Section 119.07(1)(a), F.S.

¹³ Section 286.011, F.S.

¹⁴ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

Only the Legislature may create an exemption to public records or open meetings requirements.¹⁵ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁶ 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 provisions¹⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁸

Open Government Sunset Review Act

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.¹⁹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²⁰

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³

¹⁵ 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).

¹⁶ FLA. CONST., art. I, s. 24(c).

¹⁷ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

²² *Id.*

²³ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.²⁴ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception²⁵ to the exemption is created.²⁶

U.S. Department of Defense Base Realignment and Closure Process

The base realignment and closure process, commonly referred to as “BRAC,” is the process in which military installations across the nation are reviewed to determine whether functions and bases can be consolidated or closed. The BRAC process reflects the Department of Defense’s (DoD) desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Under a BRAC process, the Secretary of Defense makes recommendations to a Commission, nominated by the President and confirmed by the Senate. The Commission is established to provide an objective, non-partisan, and independent review and analysis of the list of military installation recommendations issued by the DoD. The Commission transmits to the President a report containing its findings and conclusions based on the review and analysis of the Secretary of Defense’s recommendations. The President then either approves the recommendations of the Commission which go into effect unless disapproved by a joint resolution of the Congress, or disapproves the recommendations in which the Commission submits revised recommendations.²⁷

All BRAC commissions use a fair, open, and equitable process, as set forth by statute to recommend the closure and realignment of military bases or military missions. While giving priority to the criteria of military value, the Commission takes into account the human impact of the base closures. Additionally, it considers the possible economic, environmental, and other effects on the surrounding communities.²⁸ The loss of jobs related to a BRAC can pose significant challenges for affected communities. The impact of a BRAC can be greater and the economic recovery slowest in rural areas. Early planning and decisive leadership from officials

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- What is the identifiable public purpose or goal of the exemption?
 - Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 - Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

²⁵ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁶ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

²⁷ United States Department of Defense Base Realignment and Closure 2005. Frequently Asked Questions. <http://www.defense.gov/brac/faqs001.html>.

²⁸ Defense Base Closure and Realignment Commission, <http://www.brac.gov/>, last viewed January 28, 2014.

are important factors in addressing local socioeconomic impacts from base realignment and closing.²⁹

Since 1988, Congress has approved five BRAC rounds, which occurred in 1988, 1991, 1993, 1995, and 2005. During the four BRAC rounds that occurred from 1988 to 1995, 501 military bases, military commands, and military housing developments were recommended closed, realigned, or a previous BRAC's decision was recommended redirected (changed). Twenty-seven of those decisions (5%) were military bases or military commands located in Florida.³⁰ During the 2005 BRAC, 22 base closures were recommended by the Commission, in which no Florida bases were included. The same 2005 Commission recommended 30 major realignments, of which only one affected a Florida installation.³¹

The state of Florida has recognized the threat which BRAC decisions pose to the state's economy, and thus along the way, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state. Such entities include the Governor's Advisory Council on Base Realignment and Closure (created in 2003), the Florida Council on Military Base and Mission Support (created in 2009), and the Florida Defense Support Task Force (created in 2011). The Florida Defense Support Task Force is the single entity currently in existence charged with a BRAC-focused mission.

Florida Defense Support Task Force

The Legislature created the Florida Defense Support Task Force (Task Force)³² in 2011 and tasked it to make recommendations to preserve and protect military installations and to support the state's position in research and development related to military missions and contracting. The Task Force is also charged with improving the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.³³

The Task Force is comprised of the Governor, or his or her designee, and 12 members representing defense-related industries or communities that host military bases and installations. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint 4 members to serve on the Task Force.³⁴

The Task Force accomplishes its mission in a variety of ways including the following examples:

- Conducting detailed research and analysis of the military value of all installations in the state;
- Advocating on behalf of Florida's military installations;

²⁹ Congressional Research Service, *Military Base Closures: Socioeconomic Impacts*, February 7, 2012, <http://www.fas.org/sgp/crs/natsec/RS22147.pdf>, last viewed January 28, 2014.

³⁰ 2005 Defense Base Closure and Realignment Commission Report, Appendix F: Base Closures and Realignments by State: 1995, 1993, 1991, and 1988, <http://www.brac.gov/docs/final/AppendixF.pdf>, last viewed January 28, 2014.

³¹ 2005 Defense Base Closure and Realignment Commission Report, <http://www.brac.gov/docs/final/Volume1BRACReport.pdf>, last viewed January 28, 2014.

³² Chapter 2011-76, s. 38, Laws of Fla (creating s. 288.987 F.S., effective May 31, 2011).

³³ Chapter 2012-159, s. 11, Laws of Fla. (effective April 27, 2012).

³⁴ Section 288.987(3), F.S.

- Assisting the state in the purchase of land to prevent encroachment from impacting mission capabilities for military installations in Florida;
- Improving transportation access and infrastructure to military installations in the state;
- Assisting Florida installations in meeting DoD renewable energy goals; and
- Supporting military families through various initiatives including funding Florida's dues to the Interstate Compact on Educational Opportunity for Military Children in previous years.³⁵

Public Records Exemption under Review

In 2009, the Legislature concurrently established the Florida Council on Military Base and Mission Support (Council)³⁶ and enacted corresponding public records and public meetings exemptions³⁷ specific to BRAC preparations.³⁸ Following the repeal of Council in 2012,³⁹ the public records and public meeting exemptions were transferred to the newly created Florida Defense Support Task Force.⁴⁰

Section 288.985(1), F.S., provides a public records exemption protecting information presented to or created by the Task Force pertaining to the realignment and closure of military bases and missions by a BRAC process. Specifically, information narrowly focused on the following topics is exempt from public disclosure:

- The strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for a BRAC process;
- The strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions being subject to BRAC action; and
- The state's strategy to retain its military bases during a BRAC process.

Additionally, s. 288.985(2), F.S., provides that meetings or portions of meetings held by the Task Force or its workgroups at which the above-mentioned exempt records are presented or discussed are exempt from public meeting requirements.⁴¹ Also exempt from public disclosure are any records generated during meetings closed to the public, including but not limited to, minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes.⁴² Anyone who willfully and knowingly violates s. 288.985, F.S. commits a first degree misdemeanor.⁴³

The exemptions in s. 288.985, F.S., are subject to the Open Government Sunset Review Act and are scheduled to be repealed on October 2, 2014, unless the Legislature reenacts the exemption pursuant to the requirements in s. 119.15, F.S.

³⁵ Florida Defense Support Task Force 2012 Annual Report and 2013 Work Plan, http://www.eflorida.com/fdstf/docs/about_us/2012_FDSTF_Annual_Report.pdf, last viewed January 28, 2014.

³⁶ Chapter 2009-155, ss. 1-2, Laws of Fla (creating s. 288.984, F.S. effective July 1, 2009).

³⁷ Chapter 2009-156, ss. 1-3, Laws of Fla (effective July 1, 2009).

³⁸ According to Task Force staff, the public records and meeting exemption was never utilized while the Council was in existence.

³⁹ Chapter 2012-159, s. 9, Laws of Fla (effective July 1, 2012).

⁴⁰ Chapter 2012-98, s. 6, Law of Fla (effective July 1, 2012).

⁴¹ Section 288.985(2), F.S.

⁴² Section 288.985(3), F.S.

⁴³ Section 288.985(4), F.S.

Professional staff of the Military and Veterans Affairs, Space, and Domestic Security Committee conducted a review of the public records and public meeting exemption in s. 288.985, F.S., as required by the Open Government Sunset Review Act.⁴⁴ In response to a questionnaire regarding the exemption, Task Force staff indicated that there is a public necessity to continue to protect records and meetings pertaining to BRAC from public disclosure and recommended reenactment of the exemption under review.⁴⁵

The Task Force actively utilizes both the public records and public meeting exemptions to carry out its statutorily required functions. The public records exemption currently protects, among other records, certain reports and plans, including a statewide assessment of Florida's military value and a plan for advocating on behalf of Florida's military installations. Additionally, as of February 3, 2013, the Task Force had utilized the public meeting exemption at 15 of the 22 Task Force meetings held since its inception in January 2012.

While it is unknown when the next BRAC round will take place, by statute, the Task Force is required to continue to explore strategies to secure military installations in the state.⁴⁶ Under any formal BRAC process, Florida's military installations will be considered for realignment or closure. The potential consequences could be permanent losses of military installations, permanent losses of positions of employment, and detrimental economic effects to local communities across the state.

The review of the public records and meeting exemptions conducted by professional staff found the exemptions to be necessary in order for the Task Force to effectively and efficiently prepare the state of Florida for any future BRAC action by enhancing Florida's military value and identifying and remedying military weaknesses.

III. Effect of Proposed Changes:

Section 1 amends s. 288.985(5), F.S., to remove its scheduled repeal on October 2, 2014, thereby reenacting the public records and public meetings exemptions for information presented to or created by the Florida Defense Support Task Force or its workgroups that relate to the realignment and closure of military bases and missions by a BRAC process. This bill makes an editorial change removing a list of types of records which are exempt.⁴⁷ The criminal penalty for violating the public records and public meetings exemptions is eliminated.⁴⁸

Section 2 provides that the bill is effective October 1, 2014.

⁴⁴ Section 119.15, F.S.

⁴⁵ Questionnaire on file with the Military and Veterans Affairs, Space, and Domestic Security Committee.

⁴⁶ Section 288.987, F.S.

⁴⁷ "Public records" as defined by s. 119.011(12), F.S., encompasses more records than those enumerated in s. 288.985, F.S. The list in s. 288.985(3), F.S., is preface with the phrase "including but not limited to" and makes the list unnecessary when read together with s. 119.011(12), F.S.

⁴⁸ In general, "confidential and exempt" records violations carry criminal penalties, but "exempt" records do not.

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

None.

B. Public Records/Open Meetings Issues:

The bill repeals the scheduled expiration of an existing public records exemption specified in s. 288.985(5), F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 288.985(5) 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 by Governmental Oversight and Accountability on March 6, 2014:

The CS makes editorial changes by removing superfluous language and by removing the criminal penalty for violating the public records and public meetings exemptions.

B. Amendments:

None.

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



770972

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 38 - 50
and insert:

(2) (a) Meetings or portions of meetings of the Florida
Defense Support Task Force, or a workgroup of the task force, at
which records are presented or discussed that ~~which~~ are exempt
under subsection (1) are exempt from s. 286.011 and s. 24(b),
Art. I of the State Constitution.

(b) ~~(3)~~ Any records generated during those portions of



770972

11 meetings ~~that which~~ are exempt ~~closed to the public~~ under
12 paragraph (a) subsection (2), ~~including, but not limited to,~~
13 ~~minutes, tape recordings, videotapes, digital recordings,~~
14 ~~transcriptions, or notes,~~ are exempt from s. 119.07(1) and s.
15 24(a), Art. I of the State Constitution.

16 ~~(4) Any person who willfully and knowingly violates this~~
17 ~~section commits a misdemeanor of the first degree, punishable as~~
18 ~~provided in s. 775.082 or s. 775.083.~~

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete line 6

23 and insert:

24 of the Florida Defense Support Task Force; removing
25 the penalty; removing superfluous language; saving the

By the Committee on Military and Veterans Affairs, Space, and Domestic Security

583-01657-14

2014858__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 288.985, F.S., which provides exemptions from public records and public meetings requirements for certain records and meetings of the Florida Defense Support Task Force; saving the exemptions from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 288.985, Florida Statutes, is amended to read:

288.985 Exemptions from public records and public meetings requirements.—

(1) The following records held by the Florida Defense Support Task Force are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) That portion of a record which relates to strengths and weaknesses of military installations or military missions in this state relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense base realignment and closure process.

(b) That portion of a record which relates to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure under the United States Department of Defense base realignment and

Page 1 of 2

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

583-01657-14

2014858__

closure process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.

(c) That portion of a record which relates to the state's strategy to retain its military bases during any United States Department of Defense base realignment and closure process and any agreements or proposals to relocate or realign military units and missions.

(2) Meetings or portions of meetings of the Florida Defense Support Task Force, or a workgroup of the task force, at which records are presented or discussed which are exempt under subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(3) Any records generated during those portions of meetings which are closed to the public under subsection (2), including, but not limited to, minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 616

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Public Records/Toll Facilities

DATE: March 6, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Price | Eichin | TR | Favorable |
| 2. | Kim | McVaney | GO | Fav/CS |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 616 expands an existing public records exemption to apply to personal identifying information held by a municipality, in addition to that held by the Department of Transportation, a county, or an expressway authority, for purposes relating to payment for the use of toll facilities. The bill also removes references to specific payment types; *i.e.*, credit card, charge card, or check, and instead provides that the exemption applies to personal identifying information of individuals that is held for the purpose of paying, prepaying, or collecting tolls and associated charges.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution. This bill expands a public records exemption and requires a two-thirds vote 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.¹ The records of the legislative, executive, and judicial branches are specifically included in this constitutional provision.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records.⁵

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

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.07(1)(a), F.S.

⁵ See *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)

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

⁷ FLA. CONST., art. I, s. 24(c).

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

⁹ FLA. CONST., art. I, s. 24(c).

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

substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.¹³ The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.¹⁴ The DOT has implemented two programs (SunPass and Toll-By-Plate) for electronic toll collections.

SunPass¹⁵ is an electronic system of toll collection accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass customers typically fund prepaid accounts using credit cards, debit cards, and checks. SunPass account information includes the license plate number, address, and credit card information.¹⁶

The Toll-By-Plate¹⁷ program, established by the DOT in 2010, is an image-based system of toll collection. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.¹⁸ Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.¹⁹

Town of Bay Harbor Islands

Bay Harbor Islands operates and maintains a tolled drawbridge on the Broad Causeway in Miami-Dade County. Customers may pay the toll in cash at the tollbooth or, similar to SunPass, customers may set up prepaid "Baypass" accounts.²⁰ Conversion of the system to all-electronic toll payment is currently underway. The DOT and Bay Harbor Islands anticipate entering into an

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ See s. 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and handicapped persons.

¹⁴ Section 338.155(1), F.S.

¹⁵ Rule 14-15.0081, F.A.C.

¹⁶ Information on SunPass is available at: <http://www.floridasturnpike.com/all-electronic tolling/SunPass.cfm> (last visited January 23, 2014).

¹⁷ Rule 14-100.005, F.A.C.

¹⁸ Information on toll-by-plate is available at: <http://www.floridasturnpike.com/all-electronic tolling/TOLL-BY-PLATE.cfm> (last visited January 23, 2014).

¹⁹ Information on toll-by-plate accounts can be found at:

<https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (last visited January 23, 2014).

²⁰ Information on Baypass accounts is available at: <https://www.bayharborislands.org:453/baypass.aspx> (last visited January 23, 2014).

agreement under which the DOT will perform “back-office” toll collection for the municipality.²¹ Customers will have the option to pre-pay tolls through pre-paid accounts or through the post-payment Toll-By-Plate program. Bay Harbor Islands will continue to operate and maintain the drawbridge and, in addition to currently held personal identifying information, will hold the personal identifying information of Toll-By-Plate customers.

Public Records Exemption: Electronic Payment of Tolls

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of the DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt from public disclosure. This provision was first adopted in 1996.²² The exemption does not currently apply to personal identifying information held by a municipality, nor does it protect personal identifying information related to post-payment for the use of toll facilities by Toll-By-Plate customers.

III. Effect of Proposed Changes:

The bill amends s. 338.155(6), F.S., to expand the existing public records exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges.

Specifically, this bill expands the exemption to include personal identifying information held by a municipality. It also removes references to specific payment types and instead provides that the exemption applies to personal identifying information of individuals that is held for the purpose of *paying, prepaying, or collecting tolls and associated charges*. This includes personal identifying information of Toll-By-Plate customers. Finally, this bill protects personal identifying information that has been or is currently held by the Department of Transportation, a county, an expressway or a municipality.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill’s effective date is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

²¹ Such agreements are authorized pursuant to s. 338.161, F.S.

²² Chapter 96-178, L.O.F.

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

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill expands a public records exemption it requires a two-thirds vote for passage.

Public Necessity Statement

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State and local agencies may incur additional costs associated with implementation of this bill. Specifically, the agencies may incur costs to train their staff on the new law and to redact the newly exempted information prior to releasing a record. Most likely the costs would be absorbed as part of the day-to-day responsibilities of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 338.155 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 by Governmental Oversight and Accountability on March 6, 2014:

The CS provides for retroactive application of the exemption.

- B. **Amendments:**

None.



528654

LEGISLATIVE ACTION

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|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/06/2014 | . | |
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| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete line 29

and insert:

24(a), Art. I of the State Constitution. This exemption applies to personal identifying information held by the department, a county, a municipality, or an expressway authority before, on, or after the effective date of the exemption. This subsection is

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



11 And the title is amended as follows:
12 Delete line 9
13 and insert:
14 use of toll facilities; providing for application of
15 the exemption; providing for future

By Senator Evers

2-00358A-14

2014616__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 338.155, F.S.; providing an exemption from public
 4 records requirements for personal identifying
 5 information held by the Department of Transportation,
 6 a county, a municipality, or an expressway authority
 7 for the purpose of paying, prepaying, or collecting
 8 tolls and associated administrative charges for the
 9 use of toll facilities; providing for future
 10 legislative review and repeal of the exemption under
 11 the Open Government Sunset Review Act; providing a
 12 statement of public necessity; providing an effective
 13 date.

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

16
 17 Section 1. Subsection (6) of section 338.155, Florida
 18 Statutes, is amended to read:

19 338.155 Payment of toll on toll facilities required;
 20 exemptions.—

21 (6) Personal identifying information ~~held by provided to,~~
 22 ~~acquired by, or in the possession of~~ the Department of
 23 Transportation, a county, a municipality, or an expressway
 24 authority for the purpose of paying, prepaying, or collecting
 25 tolls and associated administrative charges for the use of using
 26 ~~a credit card, charge card, or check for the prepayment of~~
 27 ~~electronic toll facilities charges to the department, a county,~~
 28 ~~or an expressway authority~~ is exempt from s. 119.07(1) and s.
 29 24(a), Art. I of the State Constitution. This subsection is

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2014616__

30 subject to the Open Government Sunset Review Act in accordance
 31 with s. 119.15 and shall stand repealed on October 2, 2019,
 32 unless reviewed and saved from repeal through reenactment by the
 33 Legislature.

34 Section 2. The Legislature finds that it is a public
 35 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
 36 24(a), Article I of the State Constitution, personal identifying
 37 information of individuals held by the Department of
 38 Transportation, a county, a municipality, or an expressway
 39 authority for the purpose of paying, prepaying, or collecting
 40 tolls and associated administrative charges for the use of toll
 41 facilities. The exemption puts individuals who pay for tolls by
 42 TOLL-BY-PLATE, which uses photographic images of the vehicle
 43 license plate for billing purposes, on equal footing with
 44 individuals who prepay for tolls by check, debit card, or credit
 45 card, or who pay for tolls with cash at the toll booth. The
 46 exemption protects the health and safety of the public by making
 47 exempt information regarding the location, travel patterns, and
 48 travel activity of individuals who use the toll road system. The
 49 exemption protects the anonymity of all individuals on toll
 50 roads, not just cash customers, regardless of the method they
 51 use to pay tolls. The exemption also thereby promotes the use of
 52 the more efficient and effective electronic toll collection
 53 system, since paying for tolls by TOLL-BY-PLATE or prepaying for
 54 tolls by check, debit card, or credit card not only saves
 55 individuals time when passing through the toll facilities,
 56 compared to individuals who pay for tolls with cash, but also
 57 costs much less for the state to administer. Further, the
 58 exemption protects an individual's right to privacy by

Page 2 of 3

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

2-00358A-14

2014616__

59 prohibiting the public disclosure of private information about
60 the finances and location of an individual using the toll road
61 system.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG EVERS

2nd District

March 3, 2014

Honorable Jeremy Ring, Chairman
Government Oversight and Accountability Committee
405 Senate Office Building
Tallahassee, FL 32399

RE: SB 616

Dear Chairman Ring:

Please allow my Legislative Assistant, Dave Murzin, to present SB 616 regarding Public Records/Toll Facilities in your committee meeting on Thursday, March 6, 2014.

Thank you for your time and attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Greg Evers".

Greg Evers
State Senator, District 2

REPLY TO:

- 209 East Zaragoza Street, Pensacola, Florida 32502-6048 (850) 595-0213 FAX: (888) 263-0013
- 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 256

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Garcia

SUBJECT: Public Records/Forensic Behavioral Health Evaluation

DATE: March 6, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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.

This bill requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Article I, Section 24 of the Florida Constitution provides the public the right to access records created or received in connection with governmental duties, including records kept by Florida courts.¹ The State Constitution provides that the Legislature may create an exemption to public records requirements.² Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.³ Furthermore, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption

¹ FLA. CONST., art. I, s. 24

² FLA. CONST., art. I, s. 24(c).

³ FLA. CONST., art. I, s. 24(c).

may not contain other substantive provisions⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁵

In the Forensic Client Services Act, Chapter 916, F.S., the Legislature addressed the needs of criminal defendants “who have been found to be incompetent to proceed due to their mental illness, intellectual disability, or autism, or who have been acquitted of a felony by reason of insanity” and have been committed to the Department of Children and Families (DCF) or to the Agency for Persons with Disabilities (ADP).⁶ Court appointed mental health experts perform evaluations to determine if a defendant has a mental illness and whether a defendant is competent to proceed.⁷

While the clinical records of a forensic client⁸ (defendants who have been committed to the DCF or ADP) are currently confidential and exempt from being disclosed as public records,⁹ most mental health records filed with court are neither confidential nor exempt from public disclosure.¹⁰ In most cases, mental health records filed with the court only become confidential after a party (or an affected nonparty) makes a motion and the court holds a hearing and issues an order.¹¹ A general public records exemption for forensic behavioral health evaluations filed with the court can only be created by the Legislature.^{12 13}

⁴ The bill may, however, contain multiple exemptions that relate to one subject.

⁵ FLA. CONST., art. I, s. 24(c).

⁶ Section 916.105(1), F.S.

⁷ Section 916.12(1), F.S.

⁸ 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.

⁹ Section 916.107(8), F.S. This statutory exemption was then included into Florida Rules of Judicial Administration 2.420(d)(B)(x), which provides “[c]linical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity” are confidential.

¹⁰ Office of the State Courts Administrator, 2013 Judicial Impact Statement dated March 15, 2013 (on file with the Senate Governmental Oversight and Accountability Committee).

¹¹ Florida Rules of Judicial Administration 2.420.

¹² 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).

¹³ The Supreme Court “declined to suspend application of rule 2.420(d) in criminal cases until the Legislature can address the issue of confidentiality of mental health evaluations and reports, as suggested by the Task Force [on Substance Abuse and Mental Health Issues in the Court].” *In re Amendments to Florida Rule of Judicial Admin. 2.420*, 68 So. 3d 225, 229 (2011). The Supreme Court adopted the Task Force’s reasoning “that the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added” to the list of documents treated as confidential under Rule 2.420(d)(1)(B) by the clerk of court. *In re Amendments to Florida Rule of Judicial Admin. 2.420*, 68 So. 3d 225, 229 (2011).

III. Effect of Proposed Changes:

This 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:

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

This bill would increase judicial economy by reducing the number of motion hearings necessary when defendants’ mental health records were filed with the court.

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 this 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 this bill will help to reduce court workload related to disposing of defense motions and the necessity for a hearing to protect forensic behavioral health evaluation information records. OSCA is unable to quantify the fiscal impact resulting from the workload reduction due to the unavailability of data.¹⁴ OSCA predicts that Supreme Court will amend the Rules of Judicial Administration so that forensic behavioral health evaluations could be made exempt from public records.¹⁵

VI. Technical Deficiencies:

This bill makes forensic behavioral health evaluations filed with the court “confidential and exempt” and does not provide for conditions for when these records may be released.¹⁶ It is arguable a court has the inherent ability to release a confidential and exempt record in its files pursuant to an order, thereby providing a mechanism for the release should the need arise. This problem could also potentially be remedied by making the records simply “exempt” (rather than “confidential and exempt”) or by the addition of conditions for release.

Forensic behavioral health evaluations that are not filed with the court, but are held by other entities, will not be included in this exemption.

VII. Related Issues:

Florida’s courts are generally open to the public.¹⁷ While this bill makes the actual behavioral health evaluation filed with the court exempt from public disclosure, this bill does not keep members of the public outside of the courtroom when the subject matter contained in the behavioral health evaluations are being heard by the court.

VIII. Statutes Affected:

This bill creates section 916.1065 of the Florida Statutes.

¹⁴ Office of the State Courts Administrator 2014 Judicial Impact Statement, December 3, 2013 (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁵ Office of the State Courts Administrator 2014 Judicial Impact Statement, December 3, 2013 (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁶ In *WFTV, Inc. v. School Bd. Of Seminole*, 876 So.2d 48, 53 (2004), the Fifth District Court of Appeals stated: “there is a difference between records the Legislature has determined to be exempt from the Florida Public Records Act and those which the Legislature has determined to be exempt from the Florida Public Records Act and confidential. If the information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute.”

¹⁷ *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (1988).

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 6, 2014:

The CS adds a retroactivity clause, and provides that forensic behavioral health evaluations are confidential and exempt from public inspection and copying pursuant to s.119.07(1), F.S.

- B. **Amendments:**

None.

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



751818

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete line 17
and insert:
court under this chapter is confidential and exempt from s.
119.07(1) and s.



551036

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
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| | . | |

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

1 **Senate Substitute for Amendment (751818) (with title**
2 **amendment)**

3
4 Delete lines 18 - 28
5 and insert:

6 119.07(1) and s. 24(a), Art. I of the State Constitution.

7 (2) As used in this section, the term "forensic behavioral
8 health evaluation" means any record, including supporting
9 documentation, derived from a competency, substance abuse,
10 psychosexual, psychological, psychiatric, psychosocial,



551036

11 cognitive impairment, sanity, or other mental health evaluation
12 of an individual.

13 (3) The exemption under subsection (1) applies to forensic
14 behavioral health evaluations filed with a court before, on, or
15 after July 1, 2014.

16 Section 2. The Legislature finds that it is a public
17 necessity that forensic behavioral health evaluations filed with
18 the court pursuant to chapter 916, Florida Statutes, be
19 confidential and exempt from disclosure under s. 119.07(1),
20 Florida Statutes, and s. 24(a), Article

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 6

25 and insert:

26 for the term "forensic behavioral health evaluation";
27 providing retroactive application;

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/14
Meeting Date

Topic Public records/for. beh. health evals Bill Number 256
(if applicable)

Name Judge Steve Leifman Amendment Barcode _____
(if applicable)

Job Title Chair's FL Sup Ct TASKFORCE on Sub Abuse of mental health

Address 1351 N.W 12th ST Rm 617 Phone 305 548-5394
Street

MIA FL 33125 E-mail _____
City State Zip

Speaking: For Against Information

Representing FL Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

31612014

Meeting Date

Topic _____

Bill Number 256
(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:

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

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 642

INTRODUCER: Senator Brandes

SUBJECT: Florida Transportation Corporation Act

DATE: March 3, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Price</u> | <u>Eichin</u> | <u>TR</u> | Favorable |
| 2. | <u>McKay</u> | <u>McVaney</u> | <u>GO</u> | Favorable |

I. Summary:

SB 642 repeals ss. 339.401 through 339.421, F.S., which create the “Florida Transportation Corporation Act.” This act was created in 1988 to allow certain corporations authorized by the Florida Department of Transportation (FDOT) to secure and obtain right-of-way for transportation systems and to assist in the planning and design of such systems. The FDOT advises that the provisions of this act have never been used.

II. Present Situation:

Sections 339.401 through 339.421, F.S., create the “Florida Transportation Corporation Act.” This act was created in 1988¹ to allow certain nonprofit corporations authorized by the FDOT to act in the FDOT’s behalf in assisting with project planning and design, assembling right-of-way and financial support, and generally promoting projects included in the FDOT’s adopted five-year work program. The act contains various statutory provisions related to the formation, operation, and dissolution of these corporations.

Among the specific activities of transportation corporations authorized under the act are:

- acquiring, holding, investing, and administering property and transferring title to the FDOT for project development;
- performing preliminary and final alignment studies;
- receiving contributions of land for right-of-way and case donations to be applied to the purchase of right-of-way or design and construction projects; and,
- making official presentations to groups concerning the project and issuing press releases and promotional materials.

Florida transportation corporations cannot issue bonds and are not empowered to enter into construction contracts or to undertake construction. They are enabled to otherwise borrow money

¹ Section 3, ch. 88-271, Laws of Florida.

or accept donations to help defray expenses or needs associated with the corporation or a particular transportation project.

The FDOT reports, after a limited number of inquiries immediately following passage of the act, receipt of no further requests for information or other indications of interest in the act, and the provisions of the act have never been used. As a result, the Auditor General's authority to audit corporations acting on behalf of the FDOT in s. 11.45(3)(m), F.S., has never been exercised, and the provisions of Fla. Admin. Code R. 14-35, which implement the act, have never been applied.

III. Effect of Proposed Changes:

SB 642 repeals the Florida Transportation Corporation Act and the associated authority of the Auditor General to audit such corporations, as follows:

Section 1 repeals s. 11.45(3)(m), F.S., which contains the Auditor General's authority to audit transportation corporations authorized under the Florida Transportation Corporation Act.

Section 2 repeals the following statutory provisions:

- s. 339.401, F.S., which sets forth the short title, "Florida Transportation Corporation Act."
- s. 339.402, F.S., which defines the terms, "board of directors," "construction," "corporation," "department," and "project" for purposes of the act.
- s. 339.403, F.S., which sets forth Legislative findings and purposes with respect to the authorized transportation corporations.
- s. 339.404, F.S., which authorizes a written application to FDOT requesting that FDOT authorize a corporation.
- s. 339.405, F.S., which addresses the type, structure, and income of an authorized transportation corporation.
- s. 339.406, F.S., which contains provisions that must be included in the contract between FDOT and any authorized transportation corporation.
- s. 339.407, F.S., which contains provisions that must be included in the articles of incorporation of any authorized transportation corporation.
- s. 339.408, F.S., which provides for a board of directors of each authorized transportation corporation; provides for the appointment, terms, removal, and compensation of the directors; and provides for appointment of advisory directors and their service.
- s. 339.409, F.S., which requires the board of directors to adopt, and FDOT to approve, the initial bylaws of an authorized transportation corporation and which prohibits changing the bylaws without FDOT approval.
- s. 339.410, F.S., which provides for a specified notice of each meeting of the board of directors and subjects the board of directors to the provisions of s. 286.011, F.S., relating to public meetings and records.
- s. 339.411, F.S., which provides processes for amending the articles of incorporation and requirements for amended articles.
- s. 339.412, F.S., which sets forth the specific powers of any authorized corporation.
- s. 339.414, F.S., which authorizes FDOT to allow an authorized transportation corporation to use FDOT property, facilities, and personnel as specified and which prohibits any authorized

transportation corporation from receiving funds from FDOT by grant, gift, or contract unless specifically authorized by the Legislature.

- s. 339.415, F.S., which exempts authorized transportation corporations from taxation pursuant to s. 3, Art VII of the State Constitution.
- s. 339.416, F.S., which authorizes FDOT, in its sole discretion and pursuant to rule, to require the alteration of the structure, organization, programs, or activities of a transportation corporation or require the termination and dissolution of the corporation as specified.
- s. 339.417, F.S., which directs the board of directors, upon a determination by resolution that the purposes for which a corporation was formed have been substantially complied with and that all obligations have been fully paid, to dissolve the corporation, with FDOT approval.
- s. 339.418, which requires that whenever dissolution occurs, the dissolution proceedings must transfer the title to all funds and properties then owned by a corporation to FDOT.
- s. 339.419, F.S., which directs FDOT to adopt rules to implement the act. Repeal of FDOT's existing, unused Fla. Admin. Code R. 14-35 is thereby made possible.
- s. 339.420, F.S., which provides for liberal construction of the act.
- s. 339.421, F.S., which prohibits transportation corporations created pursuant to the act from entering into any agreement or arrangement for the purpose of facilitating the issuance of debt in any form, except when the debt is authorized for issuance by the Division of Bond Finance in accordance with the State Bond Act.

Section 3 provides the act takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals the following sections of the Florida Statutes: 11.45, 339.401, 339.402, 339.403, 339.404, 339.405, 339.406, 339.407, 339.408, 339.409, 339.410, 339.411, 339.412, 339.414, 339.415, 339.416, 339.417, 339.418, 339.419, 339.420, and 339.421.

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 Brandes

22-00452-14

2014642__

1 A bill to be entitled
 2 An act relating to the Florida Transportation
 3 Corporation Act; repealing s. 11.45(3)(m), F.S.,
 4 relating to the authority of the Auditor General to
 5 conduct audits of transportation corporations
 6 authorized under the Florida Transportation
 7 Corporation Act; repealing the Florida Transportation
 8 Corporation Act; repealing s. 339.401, F.S., relating
 9 to the short title; repealing s. 339.402, F.S.,
 10 relating to definitions; repealing s. 339.403, F.S.,
 11 relating to legislative findings and purpose;
 12 repealing s. 339.404, F.S., relating to authorization
 13 of transportation corporations; repealing s. 339.405,
 14 F.S., relating to the type, structure, and income of
 15 an authorized transportation corporation; repealing s.
 16 339.406, F.S., relating to the contract between the
 17 Department of Transportation and an authorized
 18 transportation corporation; repealing s. 339.407,
 19 F.S., relating to the articles of incorporation of an
 20 authorized transportation corporation; repealing s.
 21 339.408, F.S., relating to the board of directors and
 22 advisory directors of an authorized transportation
 23 corporation; repealing s. 339.409, F.S., relating to
 24 the bylaws of an authorized transportation
 25 corporation; repealing s. 339.410, F.S., relating to
 26 notice of meetings and open records of an authorized
 27 transportation corporation; repealing s. 339.411,
 28 F.S., relating to the amendment of the articles of
 29 incorporation of an authorized transportation

Page 1 of 3

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22-00452-14

2014642__

30 corporation; repealing s. 339.412, F.S., relating to
 31 the powers of an authorized transportation
 32 corporation; repealing s. 339.414, F.S., relating to
 33 the use of state property by an authorized
 34 transportation corporation; repealing s. 339.415,
 35 F.S., relating to tax exemptions for an authorized
 36 transportation corporation; repealing s. 339.416,
 37 F.S., relating to the authority of the department to
 38 alter or dissolve an authorized transportation
 39 corporation; repealing s. 339.417, F.S., relating to
 40 the dissolution of an authorized transportation
 41 corporation upon the completion of its purpose and
 42 obligations; repealing s. 339.418, F.S., relating to
 43 the transfer of funds and property of an authorized
 44 transportation corporation to the department upon the
 45 dissolution of such corporation; repealing s. 339.419,
 46 F.S., relating to department rules implementing the
 47 act; repealing s. 339.420, F.S., relating to
 48 construction of the act; repealing s. 339.421, F.S.,
 49 relating to the issuance of debt by an authorized
 50 transportation corporation; providing an effective
 51 date.

52
53 Be It Enacted by the Legislature of the State of Florida:54
55 Section 1. Paragraph (m) of subsection (3) of section
56 11.45, Florida Statutes, is repealed.57 Section 2. Sections 339.401, 339.402, 339.403, 339.404,
58 339.405, 339.406, 339.407, 339.408, 339.409, 339.410, 339.411,

Page 2 of 3

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22-00452-14

2014642__

59 339.412, 339.414, 339.415, 339.416, 339.417, 339.418, 339.419,
60 339.420, and 339.421, Florida Statutes, are repealed.

61 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)

3/6/2014

Meeting Date

Topic _____

Bill Number 642
(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

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 14, 2014

I respectfully request that **Senate Bill # 642**, relating to Florida Transportation Corporation Act, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22

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 506

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Florida Insurance Guaranty Association

DATE: March 3, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|----------------------------------|
| | <u>Johnson</u> | <u>Knudson</u> | | BI SPB 7004 as introduced |
| 1. | <u>Roberts</u> | <u>Roberts</u> | <u>EE</u> | Favorable |
| 2. | <u>Kim</u> | <u>McVaney</u> | <u>GO</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 506 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee staff of a public records exemption for certain information held by the Florida Insurance Guaranty Association (FIGA). The FIGA provides a mechanism for the payment of claims of insolvent property and casualty insurance companies in Florida.¹

Current law provides that the following records are confidential and exempt, with prescribed limitations:

- Claim files;
- Medical records that are part of a claims file and other medical information relating to the claimant; and
- Information relating to matters covered by privileged attorney-client communications.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2014, unless reenacted by the Legislature. This bill continues the exemption and does not expand the scope of the public records exemption.

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

¹ Section 631.55, F.S.

employee of the state, or of persons acting on their behalf.² The records of the legislative, executive, and judicial branches are specifically included.³

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶

Only the Legislature may create an exemption to public records requirements.⁷ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁸ 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 provisions⁹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁰

Open Government Sunset Review Act

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.¹¹ The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹²

² FLA. CONST., art. I, s. 24(a).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ 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)).

⁶ Section 119.07(1)(a), F.S.

⁷ 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).

⁸ FLA. CONST., art. I, s. 24(c).

⁹ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹² Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁴

The Act also requires specified questions to be considered during the review process.¹⁵

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁶ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁷ to the exemption is created.¹⁸

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by the Legislature in 1970 in order to service insurance claims, whether for or against the policyholder, of property and casualty insurers that have become insolvent and ordered liquidated. The association's membership is composed of all Florida licensed direct writers of property or casualty insurance.

The statutory authority governing FIGA applies to all kinds of direct insurance except the various types specifically excluded under s. 631.52, F.S. Examples of the excluded types of

¹³ Section 119.15(6)(b), F.S.

¹⁴ *Id.*

¹⁵ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁶ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁷ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

¹⁸ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

insurance are workers' compensation, surplus lines, fidelity or surety bonds, and life, annuity, health, or disability insurance. A covered claim is "an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy."

The FIGA obtains funds to pay claims of insolvent insurance companies, in part, from the liquidation of assets of these companies by the Division of Rehabilitation and Liquidation in the Department of Financial Services. Funds are also generated from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida. In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency assessments. The FIGA assesses solvent insurance companies directly for both assessments, and the insurance company is allowed to pass the assessment on to its policyholders.

Public Records under Review

Section 631.582, F.S., provides that the following records held by the Florida Insurance Guaranty Association are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Claims files, until the termination of all litigation, settlement, and final closing of all claims arising out of the same incident, although portions of the claims files may remain exempt as otherwise provided by law;
- Medical records that are part of a claims file and other information related to the medical condition or medical status of a claimant; and
- Records pertaining to matters reasonably encompassed in privileged attorney-client communications.

Claims files contain detailed information about the claim, including personal, sensitive information about the policyholder or claimant. Claims files may also contain information detailing the evaluation of the legitimacy of the claim, and a valuation of the award, if any, that should be made.

The law does not prescribe what matters are "reasonably encompassed in privileged attorney-client communications." Under the Florida Evidence Code, a client has a privilege of refusing to disclose the content of confidential communications stemming from the lawyer-client relationship. A communication between a lawyer and a client is "confidential" if it is not intended for disclosure to third persons other than when it is in furtherance of the provision of legal services or reasonably necessary for the transmission of the communication.

The law allows the release of records covered by the exemption to any state agency in the performance of that agency's official duties and responsibilities. The agency receiving the information, however, must maintain the confidential and exempt status of the records.

Section 631.582, F.S., provides for future review and repeal of the public records exemption on October 2, 2014. Professional staff of the Banking and Insurance conducted a review of the exemption pursuant to the Open Government Sunset Review Act and solicited comments from

FIGA and other stakeholders. The FIGA indicated that there is a public necessity to continue to protect the information, and recommended reenactment of the public records exemption under review. The responses appear to indicate that the exemption is necessary to preserve the confidentiality and privacy of personal information and to maintain the effective and efficient administration of FIGA.

III. Effect of Proposed Changes:

The bill removes the repeal date, thereby continuing the public records exemption for specified records of FIGA. The effective date of the bill is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an 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:

This bill continues a current exemption but does not expand the scope of an existing public records exemption; therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 631.582 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.

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

By the Committee on Banking and Insurance

597-00804-14

2014506__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 631.582, F.S., which provides an exemption from public records for certain records held by the Florida Insurance Guaranty Association; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 631.582, Florida Statutes, is amended to read:

631.582 Public records exemption.—

(1) The following records of the Florida Insurance Guaranty Association are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Claims files, until termination of all litigation, settlement, and final closing of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

(b) Medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant.

(c) Records pertaining to matters reasonably encompassed in privileged attorney-client communications.

(2) Records or portions of records made confidential and exempt by this section may be released, upon written request, to any state agency in the performance of that agency's official duties and responsibilities. The receiving agency shall maintain

Page 1 of 2

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

597-00804-14

2014506__

the confidential and exempt status of such record or portion of such record.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-6-2014

Meeting Date

Topic OGSR / FIGA

Bill Number SB506
(if applicable)

Name Joy Ryan

Amendment Barcode _____
(if applicable)

Job Title Shareholder / Meenan, P.A.

Address P.O. BOX 1247

Phone 425-4000

Tallahassee, FL
Street City State Zip

E-mail joy@meenanlawfirm.com

Speaking: For Against Information

Representing FIGA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 4, 2014

I respectfully request that **Senate Bill 506**, relating to OGSR/Florida Insurance Guaranty Association, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 612

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Preference in the Award of State Contracts

DATE: March 6, 2014 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | McKay | McVaney | GO | Fav/CS |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 612 specifies that an existing preference for Florida-based businesses that currently applies to public entity purchases of personal property also applies to the purchase of construction services. The bill also provides that the state preference preempts any local preference ordinance or regulation in procurements for personal property or construction services in which any state-appropriated funds are spent.

The bill also creates a new section in Chapter 287, F.S., requiring state agencies to report contract problems, fines, defaults, and terminations to the DMS, and for DMS to maintain a vendor complaint list, a suspended vendor list, and a terminated vendor list. Agencies must consider the fact of a vendor's status on any of the lists in evaluating competitive solicitations. Local governments may participate in the vendor reporting provisions.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property² and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.³ The DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.⁴

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁵

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁶ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

Local governmental units are not subject to the provisions of chapter 287, F.S.

¹ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

² "Personal property" is not independently defined for purposes of Ch. 287, F.S., but the chapter title for Chapter 287, F.S., is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of Ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

³ See ss. 287.032 and 287.042, F.S.

⁴ *Id.*

⁵ See ss. 287.012(6) and 287.057, F.S.

⁶ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

Vendor Reporting

The DMS has some limited general authority in terms of policing vendors that aren't adequately performing their contractual duties. The DMS currently maintains a convicted vendor list, suspended vendor list, and a vendor complaint list.⁷ The DMS must maintain the convicted vendor list pursuant to s. 287.133, F.S., which prohibits persons convicted of public entity crimes from being awarded contracts, and requires the DMS to place people on the list using an administrative process.⁸ The DMS maintains the suspended vendor list pursuant to its general authority to "remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract with the state."⁹ The suspended vendor list consists of vendors whose contracts have been found in default by state agencies.¹⁰ The vendor complaint list consists of all formal vendor complaints issued to vendors by state agencies and received by the DMS.¹¹ There appears to be no general statutory requirement mandating that agencies formally report to the DMS when agencies experience problems with vendors, or terminate vendors due to contract nonperformance.

Though s. 287.133, F.S., allows the DMS to place persons convicted of public entity crimes against political subdivisions on the convicted vendor list, when political subdivisions terminate vendors for cause due to contract nonperformance issues, there is no statutory requirement mandating the reporting of such actions to the DMS.

Contract Tracking

Pursuant to s. 215.985(14), F.S., the Chief Financial Officer (CFO) is required to establish and maintain a publically-available contract tracking system. Within 30 days of contract execution, each state entity must submit specified information to the CFO's website.¹² The information to be posted must include:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and ending dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.

⁷ The lists are posted on the internet at:

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists

⁸ As of March 7, 2014, nobody is listed on the convicted vendor list, available at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list.

⁹ Section 287.042(1)(b), F.S. The administrative rule implementing this authority is Rule 60A-1.006(2), F.A.C.

¹⁰ As of March 7, 2014, there are 85 vendors on the suspended vendor list, available at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/suspended_vendor_list.

¹¹ As of March 7, 2014, four vendors are on this list, located at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/vendor_complaint_list.

¹² The system is called the Florida Accountability Contract Tracking System (FACTS), available at

<https://facts.fldfs.com/Search/ContractSearch.aspx>

- All payments made to the contractor to date.
- Applicable contract performance measures.
- If a competitive solicitation was not used to procure the goods or services, the justification of such action, including citation to a statutory exemption or exception from competitive solicitation, if any.
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.

Florida In-state Preference

State agencies, universities, colleges, school districts, and other political subdivisions are required to grant a preference in the award for contracts for the purchase of personal property, when competitive solicitation is required and when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in another state, or political subdivision of that state.¹³ The preference is mandatory and is utilized by the procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state. The preference awarded is the same preference provided by the out-of-state bidder's home state.

If the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state, and that state does not award a preference for in-state vendors, state agencies, universities, colleges, school districts, and other political subdivisions must award a 5 percent preference to Florida based vendors.¹⁴

A vendor whose principal place of business is outside of this state must submit with the bid, proposal, or reply documents a written opinion of an attorney at law licensed to practice law in that foreign state as to the preferences, if any, granted by the law of that state to a business entity whose principal place of business is in that foreign state.¹⁵

Florida's preference law does not apply to transportation projects for which federal aid funds are available,¹⁶ or to counties or cities.¹⁷ It also does not apply in the award of contracts for the purchase of construction services.

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The department is responsible for establishing by rule the following:¹⁸

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;

¹³ Section 287.084(1)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 287.084(2), F.S.

¹⁶ Section 287.084(1)(b), F.S.

¹⁷ Section 287.084(1)(c), F.S.

¹⁸ Section 255.29, F.S.

- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities those contracts are determined to be in the best interest of the state.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹⁹ Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.²⁰

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Weekly²¹ at least 21 days prior to the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the Florida Administrative Weekly, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.²²

Florida Preference to State Residents

Section 255.04, F.S., provides that every board of the state, county, or municipality that is charged with the duty of erecting or constructing any public administrative or institutional building must give preference, in the purchase of material and in letting contracts for the construction of such building, to materialmen, contractors, builders, architects, and laborers who reside within the state whenever such material can be purchased or the services or such materialmen, contractors, builders, architects, and laborers can be employed at no greater expense than that which would obtain if such purchase was made from, or contract let, or employment given to a person residing outside of the state.

Another statute provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications²³ to those of non-residents.²⁴ If a construction contract is funded by local funds, the contract may contain such a provision.²⁵ In addition, the contractor required to employ state residents must contact the

¹⁹ See chapters 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

²⁰ See s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

²¹ The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.

²² For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

²³ Section 255.099(1)(a), F.S., defines substantially equal qualifications as the “qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.”

²⁴ Section 255.099(1), F.S.

²⁵ *Id.*

Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.²⁶

III. Effect of Proposed Changes:

Procurement Preferences

The bill amends s. 287.084, F.S., the existing preference to Florida businesses in the purchase of commodities and services in Ch. 287, F.S., by applying the preference to construction services, and expanding the application of the preference to counties and municipalities for both purchases of personal property as well as construction services. The current law and the proposed change do not apply to transportation projects funded by federal aid.

The bill adds a preemption provision that applies to any competitive solicitation in which payment for personal property or construction services is to be made partially or wholly from state-appropriated funds. The provision applies to any local ordinance or regulation that restricts a contractor who possesses a certificate of competency issued by the Department of Business and Professional Regulation²⁷ from competing for an award based upon:

- The vendor maintaining an office or place of business within a particular local jurisdiction;
- The vendor hiring employees or subcontractors from within a particular local jurisdiction; or
- The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

In any solicitation subject to this provision, the public entity must disclose in the solicitation whether payment will come from state-appropriated funds, the amount of such funds, and the percentage of such funds compared to the total cost.

State Vendor Reporting

The bill creates s. 287.1335, F.S., to require that agencies report to DMS on certain actions taken with contract vendors. Local governmental entities are permitted, but not required, to report these vendor actions to the DMS.

The DMS is required to compile and maintain the following 3 lists, and provide public access to the lists through its website:

- A "suspended vendor list" of all vendors whose ability to bid or perform state or local government contracts has been temporarily suspended by an agency or a participating local governmental entity due to a contract default by the vendor or for other good cause.
- A "terminated vendor list" means a list of all reported vendors whose contracts have been terminated by an agency or a participating local governmental entity due to a contract default by the vendor or for other good cause.
- A "vendor complaint list" means a list of complaints that have been issued to vendors by an agency or participating local governmental entity.

²⁶ Section 255.099(1)(b), F.S.

²⁷ Section 489.105(8), F.S.

Agencies must, and local governmental entities may, provide the DMS with copies of complaints issued to vendors and the names of suspended and terminated vendors for the vendor complaint list, the suspended vendor list, and the terminated vendor list, respectively. Agencies must, and local governmental entities may, report quarterly to the DMS with updated information necessary to maintain the lists. Agencies must report to the DMS all instances of a material breach of a contract or a notice of default and subsequent termination within 30 days after such occurrence.

Agencies must require that a vendor responding to a competitive solicitation disclose whether the vendor has, within the previous 5 years, had a contract terminated by a federal, state, or local governmental entity after defaulting on a contract; paid a fine or penalty incurred by nonperformance of a federal, state, or local government contract; or entered into an agreement with a federal, state, or local governmental entity in settlement of any issues related to default or nonperformance of a contract. An agency may consider a vendor's failure to disclose such information in determining whether the vendor is in breach of any resulting contract. Local governmental entities may require such disclosures.

When evaluating bids, proposals, or replies to competitive solicitations, an agency must consider information available on the three lists in determining whether the vendor submitting a response to the competitive solicitation is a responsible and responsive vendor. If an agency enters into a contract with a vendor on any of the three lists, the contract file must contain documentation specifying that the agency's designee with authority to sign the contract was aware that the contracted vendor was named on the list at the time the contract was initially entered into.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences. Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist. The exceptions to the constitutional provision include a legislative determination that the law fulfills an important state interest and one of the following relevant conditions: (a) the law requiring such expenditure is approved by 2/3 of the membership of each chamber or (b) the expenditure is required to comply with a law that applies to all persons similarly situated.

In this instance, the bill does not contain a legislative determination that the bill fulfills an important state interest. However, the law, as amended, will apply to all state and local governmental entities in Florida. Arguably, any expenditure required by this bill will be required to comply with a law that applies to all persons similarly situated.

Subsection (d) of Art. VII, Sec. 18, of the State Constitution exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact on cities and counties must be determined on an aggregate, statewide basis. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2013-2014²⁸), are exempt.²⁹

The Revenue Estimating Conference has not met on this bill, so the financial impact is unknown at this time. If the overall aggregate fiscal impact on cities and counties exceeds \$1.9 million per year, the bill, to be binding on all cities and counties, must meet the relevant conditions as an exception to the constitutional requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Commerce Clause

The U.S. Constitution provides that Congress shall have the power to “regulate commerce... among the states.”³⁰ The Commerce Clause acts not only as a positive grant of powers to Congress, but also as a negative constraint upon the states.³¹ When a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.³² A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.³³ Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

²⁸ Based on the Demographic Estimating Conference’s final population estimate for April 1, 2014, which was adopted on February 10, 2014. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicssummary.pdf> (last visited on February 28, 2014).

²⁹ See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on March 5, 2013).

³⁰ U.S. Const. art. I, s. 8, cl. 3.

³¹ See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

³² *National Collegiate Athletic Ass’n v. Associated Press*, 18 So.3d 1201, 1211-1212 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

³³ *Id.*

Equal Protection Clause

The United States Constitution provides that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws.”³⁴ The expansion of the in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.³⁵ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.³⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Due to the expansion of the Florida business preference to construction services, Florida-based businesses might obtain more public contracts.

C. Government Sector Impact:

Indeterminate. The application of the 5 percent Florida preference to construction contracts theoretically could increase costs of those projects, and the offsetting secondary economic benefits of awarding more contracts to Florida-based businesses are difficult to determine in advance.

The economic effects caused by preemption of local preference ordinances would be difficult to calculate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends a current preference applicable to purchases of personal property, located in Ch. 287, F.S., to apply to purchases of construction services. Public construction contracting is regulated in Ch. 255, F.S., which also includes two existing preferences. The construction preference would be better placed in Ch. 255, F.S.

The DMS probably needs rulemaking authority to implement the vendor reporting requirements.

³⁴ U.S. Const. amend. XIV, s. 1; *see also* FLA. Const. art. I, s. 2.

³⁵ *Nordlinger v. Hahn*, 505 U.S. 1, 33-34 (1992) (stating that a “classification rationally furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.”)

³⁶ *Id.*

The requirement that agencies consider in competitive solicitations whether a vendor is listed on any of the three vendor action lists could offer another avenue for aggrieved vendors to attack agency actions in procurement protests.

Principal Place of Business

Current law does not provide for a definition of “principal place of business.” There are two competing tests to determine where a company’s principal place of business is located.

The first is the “substantial predominance” test, which analyzes the following criteria: the location of its employees, where sales took place, its production activities, its tangible property, its sources of income, the value of land owned and leased, and the replacement cost of assets located in a certain state.³⁷

The second test is the “nerve center test.” Under this test, a company’s principal places of business refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.³⁸ The Department of Management Services has previously utilized the “nerve center” test to determine the company’s principal place of business.³⁹

VIII. Statutes Affected:

This bill substantially amends sections 215.985 and 287.084 of the Florida Statutes.

The bill creates section 287.1335 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 by Governmental Oversight and Accountability on March 6, 2014:

The CS adds a new section requiring state agencies to report contract problems, fines, defaults, and terminations to the DMS, and for DMS to maintain a vendor complaint list, a suspended vendor list, and a terminated vendor list. Agencies must consider the fact of a vendor’s status on any of the lists in evaluating competitive solicitations. Local governments may participate in the vendor reporting provisions.

³⁷ *Ghaderi v. United Airlines, Inc.*, 136 F.Supp.2d 1041, 1044-46 (N.D. Cal 2001).

³⁸ *Hertz Corp v. Friend et al.*, 130 S.Ct. 1181 (2010).

³⁹ In a 2010 memorandum to purchasing directors, the department indicated it intended to use the nerve center test when applying the Florida based business preference found in s. 49 of Ch. 2010-151, L.O.F., to both state term contracts and other department issued solicitations. Memorandum to Purchasing Directors, Department of Management Services, September 2, 2010 at 3.

B. Amendments:

None.

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



291682

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Before line 27

insert:

Section 1. Paragraph (a) of subsection (14) of section
215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(14) The Chief Financial Officer shall establish and
maintain a secure contract tracking system available for viewing
and downloading by the public through a secure website. The



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11 Chief Financial Officer shall use appropriate Internet security
12 measures to ensure that no person has the ability to alter or
13 modify records available on the website.

14 (a) Within 30 calendar days after executing a contract,
15 each state entity shall post the following information relating
16 to the contract on the contract tracking system:

17 1. The names of the contracting entities.

18 2. The procurement method.

19 3. The contract beginning and ending dates.

20 4. The nature or type of the commodities or services
21 purchased.

22 5. Applicable contract unit prices and deliverables.

23 6. Total compensation to be paid or received under the
24 contract.

25 7. All payments made to the contractor to date.

26 8. Applicable contract performance measures.

27 9. If a competitive solicitation was not used to procure
28 the goods or services, the justification of such action,
29 including citation to a statutory exemption or exception from
30 competitive solicitation, if any.

31 10. Electronic copies of the contract and procurement
32 documents that have been redacted to exclude confidential or
33 exempt information.

34 11. Whether the contractor was listed on the vendor
35 complaint list, suspended vendor list, or terminated vendor list
36 under s. 287.1335 at the time the contract was initially entered
37 into.

38 Section 2. Section 287.1335, Florida Statutes, is created
39 to read:



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40 287.1335 Vendors; reporting by agencies and local
41 governmental entities.-

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

43 (a) "Suspended vendor list" means a list compiled by the
44 department of all reported vendors whose ability to bid or
45 perform state or local government contracts has been temporarily
46 suspended by an agency or a participating local governmental
47 entity due to a contract default by the vendor or for other good
48 cause.

49 (b) "Terminated vendor list" means a list compiled by the
50 department of all reported vendors whose contracts have been
51 terminated by an agency or a participating local governmental
52 entity due to a contract default by the vendor or for other good
53 cause.

54 (c) "Vendor" means an entity or person in a contractual
55 relationship with an agency or a local governmental entity.

56 (d) "Vendor complaint list" means a list compiled by the
57 department of complaints that have been issued to vendors by an
58 agency or participating local governmental entity.

59 (2) An agency shall provide the department with copies of
60 complaints issued to vendors and the names of suspended and
61 terminated vendors for the vendor complaint list, the suspended
62 vendor list, and the terminated vendor list, respectively. A
63 local governmental entity may provide such information to the
64 department.

65 (3) The department shall maintain and update, on its
66 website, the vendor complaint list, the suspended vendor list,
67 and the terminated vendor list. In addition, the department
68 shall provide public access through its website of copies of



291682

69 complaints issued to a vendor by an agency or participating
70 local governmental entity.

71 (4) An agency shall provide the department each quarter
72 with updated information necessary to maintain the vendor
73 complaint list, the suspended vendor list, and the terminated
74 vendor list. A local governmental entity may provide such
75 information to the department each quarter. An agency shall
76 report to the department all instances of a material breach of a
77 contract or a notice of default and subsequent termination
78 within 30 days after such occurrence.

79 (5) (a) An agency shall require that a vendor responding to
80 a competitive solicitation disclose whether the vendor has,
81 within the previous 5 years, had a contract terminated by a
82 federal, state, or local governmental entity after defaulting on
83 a contract; paid a fine or penalty incurred by nonperformance of
84 a federal, state, or local government contract; or entered into
85 an agreement with a federal, state, or local governmental entity
86 in settlement of any issues related to default or nonperformance
87 of a contract. An agency may consider a vendor's failure to
88 disclose such information in determining whether the vendor is
89 in breach of any resulting contract.

90 (b) A local governmental entity may require such
91 disclosures from a vendor in response to a competitive
92 solicitation.

93 (6) When evaluating bids, proposals, or replies to
94 competitive solicitations, an agency must consider information
95 available on the vendor complaint list, suspended vendor list,
96 and terminated vendor list in determining whether the vendor
97 submitting a response to the competitive solicitation is a



291682

98 responsible and responsive vendor. If an agency enters into a
99 contract with a vendor on the vendor complaint list, suspended
100 vendor list, or terminated vendor list, the contract file must
101 contain documentation specifying that the agency's designee with
102 authority to sign the contract was aware that the contracted
103 vendor was named on the vendor complaint list, suspended vendor
104 list, or terminated vendor list at the time the contract was
105 initially entered into.

106
107 ===== T I T L E A M E N D M E N T =====

108 And the title is amended as follows:

109 Delete lines 2 - 3

110 and insert:

111 An act relating to government contracting; amending s.
112 215.985, F.S.; revising information to be posted on
113 the Chief Financial Officer's contract tracking system
114 to conform to changes made by the act; amending s.
115 287.1335, F.S.; defining terms; requiring agencies to
116 provide the Department of Management Services with
117 copies of vendor complaints and names of suspended and
118 terminated vendors; authorizing local governmental
119 entities to provide such information to the
120 department; requiring the department to maintain
121 certain information regarding vendors on its website;
122 requiring an agency to submit specified information to
123 the department on a quarterly basis; authorizing a
124 local governmental entity to submit such information
125 on the same basis; requiring a vendor responding to an
126 agency's competitive solicitation to disclose certain



127 information; specifying certain requirements for
128 considering a response to a competitive solicitation
129 or entering a contract; amending s. 287.084, F.S.;
130 expanding



110196

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 53 - 54

and insert:

(b) To ensure the availability of federal aid funds,
paragraph (a) does not apply to contracts for transportation
projects procured by the Department of Transportation ~~for which~~
~~federal aid funds are available.~~

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



110196

11 And the title is amended as follows:

12 Delete line 10

13 and insert:

14 services; providing an exception; requiring counties
15 and municipalities to

By Senator Hays

11-00814-14

2014612__

1 A bill to be entitled
 2 An act relating to preference in the award of state
 3 contracts; amending s. 287.084, F.S.; expanding
 4 provisions that require an agency, university,
 5 college, school district, or other political
 6 subdivision of the state to provide preferential
 7 consideration to a Florida business in awarding
 8 competitively bid contracts to purchase personal
 9 property to include the purchase of construction
 10 services; requiring counties and municipalities to
 11 provide such preferential consideration; providing
 12 that for specified competitive solicitations the
 13 authority to grant a preference supersedes any local
 14 ordinance or regulation that restricts specified
 15 contractors from competing for an award based upon
 16 certain conditions; requiring a university, college,
 17 county, municipality, school district, or other
 18 political subdivision to make specified disclosures in
 19 competitive solicitation documents; providing that a
 20 university, college, county, municipality, school
 21 district, or other political subdivision is not
 22 prohibited from awarding a contract to a vendor under
 23 certain circumstances; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Subsection (1) of section 287.084, Florida
 28 Statutes, is amended to read:
 29 287.084 Preference to Florida businesses.—

Page 1 of 3

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

11-00814-14

2014612__

30 (1) (a) ~~If when~~ an agency, university, college, school
 31 district, or other political subdivision of the state is
 32 required to make purchases of personal property or construction
 33 services through competitive solicitation and the lowest
 34 responsible and responsive bid, proposal, or reply is by a
 35 vendor whose principal place of business is in a state or
 36 political subdivision thereof which grants a preference for the
 37 purchase of such personal property or construction services to a
 38 person whose principal place of business is in such state, then
 39 the agency, university, college, school district, or other
 40 political subdivision of this state shall award a preference to
 41 the lowest responsible and responsive vendor having a principal
 42 place of business within this state, which preference is equal
 43 to the preference granted by the state or political subdivision
 44 thereof in which the lowest responsible and responsive vendor
 45 has its principal place of business. In a competitive
 46 solicitation in which the lowest bid is submitted by a vendor
 47 whose principal place of business is located outside the state
 48 and that state does not grant a preference in competitive
 49 solicitation to vendors having a principal place of business in
 50 that state, the preference to the lowest responsible and
 51 responsive vendor having a principal place of business in this
 52 state shall be 5 percent.

53 (b) Paragraph (a) does not apply to transportation projects
 54 for which federal aid funds are available.

55 (c)1. For a competitive solicitation in which payment for
 56 the personal property or construction services is to be made in
 57 whole or in part from funds appropriated by the state, this
 58 section preempts and supersedes any local ordinance or

Page 2 of 3

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

11-00814-14

2014612__

59 regulation that restricts a contractor certified under s.
60 489.105(8) from competing for an award based upon:

61 a. The vendor maintaining an office or place of business
62 within a particular local jurisdiction;

63 b. The vendor hiring employees or subcontractors from
64 within a particular local jurisdiction; or

65 c. The vendor's prior payment of local taxes, assessments,
66 or duties within a particular local jurisdiction.

67 2. In any competitive solicitation subject to this section,
68 a university, college, county, municipality, school district, or
69 other political subdivision of this state shall disclose in the
70 solicitation document whether payment will come from funds
71 appropriated by the state and, if known, the amount of such
72 funds or the percentage of such funds as compared to the
73 anticipated total cost of the personal property or construction
74 services.

75 3. Except as provided in subparagraph 1., this section does
76 not prohibit a university, college, county, municipality, school
77 district, or other political subdivision of this state from
78 awarding a contract to a vendor in accordance with applicable
79 state laws or local ordinances or regulations.

80 ~~(c) As used in this section, the term "other political~~
81 ~~subdivision of this state" does not include counties or~~
82 ~~municipalities.~~

83 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)

March 6, 2014

Meeting Date

Topic Preference in Award of State Contracts

Bill Number 612
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title Partner, Metz, Husband & Daughton, P.A.

Address 215 South Monroe St., Suite 505
Street

Phone 850-205-9000

Tallahassee, FL 32301
City State Zip

E-mail warren.husband@metzlaw.com

Speaking: For Against Information

Representing Waiving in Support for the Florida Associated General Contractors Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/14

Meeting Date

Topic Preference Fito Contracts

Bill Number 612

(if applicable)

Name Michael Watson

Amendment Barcode

(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038

Phone

Street

City Melbourne, FL

State

32302

Zip

E-mail

Speaking: For Against Information

Representing Associated Builders and Contractors of FL

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)

3/6/14
Meeting Date

Topic SB 612

Bill Number 612
(if applicable)

Name Casey Cook

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address Po Box 1757
Street

Phone 701 3701

Tallahassee FL 32302
City State Zip

E-mail ccook@flcities.com

Speaking: For Against Information

Representing Florida League of Cities

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 SB 612 – Preference in the Award of State Contracts

Date: January 17, 2014

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 292

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records/Prepaid Wireless E911 Fee

DATE: March 6, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Caldwell | Caldwell | CU | Favorable |
| 2. | Kim | McVaney | GO | Fav/CS |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 292 expands an existing public records exemption for information contained in tax returns, reports, and other documents that retail sellers of wireless communications services and devices provide to the Department of Revenue when remitting prepaid wireless E911 fees collected from customers. This bill makes proprietary confidential business information provided to the E911 Board of Directors, the Technology Program within the Department of Management Services, or to the Department of Revenue as agent of the E911 Board, confidential and exempt from public disclosure.

The exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement 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:

Florida's Public Records Law

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

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

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

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

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

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

⁵ Section 119.07(1)(a), F.S.

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

⁷ FLA. CONST., art. I, s. 24(c).

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

⁹ FLA. CONST., art. I, s. 24(c).

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

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Taxpayer Records Provided to the Department of Revenue

The Department of Revenue is currently not authorized to share information with the E911 Board, nor is the Department of Revenue authorized to share information related to E911 revenue with the Department of Management Services.¹³

Proprietary Confidential Business Information submitted to the E911 Board or the Technology Program

Section 365.174, F.S. provides that the proprietary confidential business information submitted by a provider to the E911 Board or to the Technology Program within the Department of Management Services is confidential and exempt from public disclosure.¹⁴ This section also provides that propriety confidential business information includes information about customers, usage and capacity data, technological information and trade secrets.

III. Effect of Proposed Changes:

Pursuant to s. 365.172(8), F.S., communications service providers collect E911 fees from customers who remit monthly payments and, in turn, remit those fees to the E911 Board. Until July 1, 2013, E911 fees were not assessed on or collected if an end user's service was a prepaid calling arrangement which included prepaid calling cards and prepaid wireless services sold by retailers.¹⁵ At issue was the complexity of collecting and remitting E911 fees by retailers who were not communications service providers. SB 294, the substantive bill related to this bill, creates a mechanism for collection of the E911 fees from retailers. This bill makes the information that is submitted to the Department of Revenue confidential and exempt from public record disclosure and allows the Department of Revenue, the E911 Board, and the Technology Program within the Department of Management Services to share those records.

Section 1 provides that all proprietary confidential business information submitted by a provider to the E911 Board, to the Technology Program within the Department of Management Services, or to the Department of Revenue as an agent of the E911 Board is confidential and exempt from public disclosure. This section provides that the exemption stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature through the Open Government Sunset Review Act.

Section 2 provides the legislative finding of public necessity that the disclosure of any confidential proprietary business information contained in returns, reports, accounts, or declarations received by the Department of Revenue or submitted to the E911 Board, the Technology Program within the Department of Management Services, or the Department of Revenue as an agent of the Board would adversely affect the business interests of prepaid wireless service providers or sellers who provide the information by harming them in the market

¹³ Section 213.053(8)(q), F.S., provides that the Department of Revenue is limited to providing information related to ss 175.111 and 185.09, F.S. to the Department of Management Services.

¹⁴ Section 365.174(1) provides that statistical abstracts that do not contain information which identifies subscribers or revenue attributable to a provider can be released.

¹⁵ S. 365.172(8)(a)3.

place and impair competition in the communications industry.¹⁶ The public necessity statement also provides that the disclosure of data that reveals the business interests of prepaid wireless service providers or sellers creates a competitive disadvantage and an unfair advantage for their competitors who can use the information to impair full and fair competition and impede competition in the wireless marketplace to the disadvantage of consumers of wireless service. Finally, the public necessity statement provides that the public and private harm resulting in the disclosure of the information significantly outweighs any public benefit derived from the disclosure and ability of the public to scrutinize or monitor agency action is not diminished by nondisclosure of the information.

Section 3 provides that the bill is effective at the same time that SB 294, or similar legislation, takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Florida Constitution provides that only the Legislature may create an exemption to the right of access to public records.¹⁷ Such an exemption must be created by general law, be passed by a two-thirds vote of each house of the Legislature, provide a statement of public necessity, and be as narrowly drafted as possible to accomplish the stated public necessity.¹⁸

Because this bill expands an existing public records exemption,¹⁹ it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage. This bill includes a public necessity statement and is narrowly tailored.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Article I, Section 24(c) of the Florida Constitution requires that when a new public records exemption is enacted, a public necessity statement justifying the exemption must be included.

¹⁷ Art. I, s. 24(c) of the State Constitution.

¹⁸ *Id.*

¹⁹ S. 365.174, F.S.

B. Private Sector Impact:

Prepaid wireless providers and sellers may be more willing to provide proprietary confidential business information to the Department of Revenue, the E911 Board, and the Technology Program within the Department of Management Services with the exemption in place.

C. Government Sector Impact:

The ability of the Department of Revenue, the E911 Board, or the Technology Program within the Department of Management Services to share confidential information may improve effectiveness and efficiency in the administration of the prepaid wireless E911 fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 365.174 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.)

CS by Governmental Oversight and Accountability on March 6, 2014:

The CS removes a redundant public records exemption expansion for the Department of Revenue under s. 213.053, F.S. The CS also inserts a missing bill number so that CS/SB 292 will take effect at the same time as SB 294.

B. Amendments:

None.



674716

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 365.174, Florida Statutes, is amended to
read:

365.174 Proprietary confidential business information.—

(1) (a) All proprietary confidential business information
submitted by a provider to the board or the office, ~~including~~
~~the name and billing or service addresses of service~~



674716

11 ~~subscribers, and trade secrets as defined by s. 812.081, is~~
12 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
13 of the State Constitution.

14 (b) Statistical abstracts of information collected by the
15 board or the office may be released or published, but only in a
16 manner that does not identify or allow identification of
17 subscribers or their service numbers or of revenues attributable
18 to any provider.

19 (2)(a) All proprietary confidential business information
20 submitted by a provider to the Department of Revenue, as an
21 agent of the board, is confidential and exempt from s. 119.07(1)
22 and s. 24(a), Art. I of the State Constitution.

23 (b) The Department of Revenue may provide information
24 relative to s. 365.172(9) to the Secretary of Management
25 Services, or his or her authorized agent, or to the E911 Board
26 established in s. 365.172(5) for use in the conduct of the
27 official business of the Department of Management Services or
28 the E911 Board.

29 (c) This subsection is subject to the Open Government
30 Sunset Review Act in accordance with s. 119.15 and shall stand
31 repealed on October 2, 2019, unless reviewed and saved from
32 repeal through reenactment by the Legislature.

33 (3)~~(2)~~ As used in this section, the term "proprietary
34 confidential business information" means customer lists,
35 customer numbers, individual or aggregate customer data by
36 location, usage and capacity data, network facilities used to
37 serve subscribers, technology descriptions, technical
38 information, or trade secrets, including trade secrets as
39 defined in s. 812.081, and the actual or developmental costs of



674716

40 E911 systems that are developed, produced, or received
41 internally by a provider or by a provider's employees,
42 directors, officers, or agents.

43 Section 2. The Legislature finds that it is a public
44 necessity that proprietary confidential business information
45 submitted by a prepaid wireless service provider to the
46 Department of Revenue, as an agent of the E911 Board, be made
47 confidential and exempt from s. 119.07(1), Florida Statutes, and
48 s. 24(a), Article I of the State Constitution. The disclosure of
49 such information would adversely affect the business interests
50 of prepaid wireless service providers providing the information
51 by harming them in the marketplace and would impair competition
52 in the communications industry. Disclosure of data that reveals
53 the business interests of prepaid wireless service providers
54 creates a competitive disadvantage and an unfair advantage for
55 their competitors. Competitors can use such information to
56 impair full and fair competition and impede competition in the
57 wireless marketplace to the disadvantage of consumers of
58 wireless services. Thus, the public and private harm in
59 disclosing this information significantly outweighs any public
60 benefit derived from disclosure, and the ability of the public
61 to scrutinize or monitor agency action is not diminished by
62 nondisclosure of this information.

63 Section 3. This act shall take effect on the same date that
64 SB 294 or similar legislation takes effect, if such legislation
65 is adopted in the same legislative session or an extension
66 thereof and becomes a law.

67
68 ===== T I T L E A M E N D M E N T =====



674716

69 And the title is amended as follows:

70 Delete everything before the enacting clause
71 and insert:

72 A bill to be entitled

73 An act relating to public records; amending s.

74 365.174, F.S.; providing an exemption from public
75 records requirements for proprietary confidential
76 business information submitted by a wireless service
77 provider to the Department of Revenue; authorizing the
78 Department of Revenue to share such information with
79 the Secretary of Management Services and the E911
80 Board; providing for future legislative review and
81 repeal; providing a statement of public necessity;
82 providing a contingent effective date.

By Senator Hays

11-00039-14

2014292__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 213.053, F.S.; providing an exemption from public
 4 records requirements for specified information
 5 received by the Department of Revenue relating to the
 6 prepaid wireless E911 fee; authorizing the department
 7 to share such information with the Secretary of
 8 Management Services and the E911 Board; amending s.
 9 365.174, F.S.; including the Department of Revenue as
 10 an additional recipient of specified confidential
 11 information relating to wireless service; providing
 12 for future legislative review and repeal; providing
 13 statements of public necessity; providing a contingent
 14 effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Paragraphs (n) through (v) of subsection (1) of
 19 section 213.053, Florida Statutes, are redesignated as
 20 paragraphs (o) through (w), respectively, a new paragraph (n) is
 21 added to that subsection, and paragraph (cc) is added to
 22 subsection (8) of that section, to read:
 23 213.053 Confidentiality and information sharing.-
 24 (1) This section applies to:
 25 (n) Section 365.172(9), prepaid wireless E911 fee. This
 26 paragraph is subject to the Open Government Sunset Review Act in
 27 accordance with s. 119.15 and is repealed on October 2, 2019,
 28 unless reviewed and saved from repeal through reenactment by the
 29 Legislature;

Page 1 of 4

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

11-00039-14

2014292__

30 (8) Notwithstanding any other provision of this section,
 31 the department may provide:
 32 (cc) Information relative to s. 365.172(9) to the Secretary
 33 of Management Services or his or her authorized agent or to the
 34 E911 Board established in s. 365.172(5) for use in the conduct
 35 of the department's official business.
 36
 37 Disclosure of information under this subsection shall be
 38 pursuant to a written agreement between the executive director
 39 and the agency. Such agencies, governmental or nongovernmental,
 40 shall be bound by the same requirements of confidentiality as
 41 the Department of Revenue. Breach of confidentiality is a
 42 misdemeanor of the first degree, punishable as provided by s.
 43 775.082 or s. 775.083.
 44 Section 2. Subsection (1) of section 365.174, Florida
 45 Statutes, is amended to read:
 46 365.174 Proprietary confidential business information.-
 47 (1) (a) All proprietary confidential business information
 48 ~~submitted by a provider to the board or the office,~~ including
 49 the name and billing or service addresses of service
 50 subscribers, and trade secrets as defined by s. 812.081, which
 51 is submitted to:
 52 1. The board or the office; or
 53 2. The Department of Revenue as an agent of the board,
 54
 55 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 56 I of the State Constitution. Statistical abstracts of
 57 information collected by the board or the office may be released
 58 or published, but only in a manner that does not identify or

Page 2 of 4

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

11-00039-14 2014292__

59 allow identification of subscribers or their service numbers or
60 of revenues attributable to any provider.

61 (b) Subparagraph (a)2. is subject to the Open Government
62 Sunset Review Act in accordance with s. 119.15 and shall stand
63 repealed on October 2, 2019, unless reviewed and saved from
64 repeal through reenactment by the Legislature.

65 Section 3. (1) The Legislature finds that it is a public
66 necessity that any confidential proprietary business information
67 contained in returns, reports, accounts, or declarations
68 received by the Department of Revenue pursuant to s. 365.172,
69 Florida Statutes, be exempt from public records requirements.
70 The disclosure of such information would adversely affect the
71 business interests of prepaid wireless service providers or
72 sellers providing the information by harming them in the
73 marketplace and would impair competition in the communications
74 industry. Disclosure of data that reveals the business interests
75 of prepaid wireless service providers or sellers creates a
76 competitive disadvantage and an unfair advantage for their
77 competitors. Competitors can use such information to impair full
78 and fair competition and impede competition in the wireless
79 marketplace to the disadvantage of consumers of wireless
80 services. Thus, the public and private harm in disclosing this
81 information significantly outweighs any public benefit derived
82 from disclosure and the ability of the public to scrutinize or
83 monitor agency action is not diminished by nondisclosure of this
84 information.

85 (2) The Legislature finds that it is a public necessity
86 that any confidential proprietary business information contained
87 in returns, reports, accounts, or declarations submitted to the

Page 3 of 4

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

11-00039-14 2014292__

88 E911 Board, the Technology Program within the Department of
89 Management Services, or the Department of Revenue as an agent of
90 the board pursuant to s. 365.174, Florida Statutes, be exempt
91 from public records requirements. The disclosure of such
92 information would adversely affect the business interests of
93 prepaid wireless service providers or sellers providing the
94 information by harming them in the marketplace and would impair
95 competition in the communications industry. Disclosure of data
96 that reveals the business interests of prepaid wireless service
97 providers or sellers creates a competitive disadvantage and an
98 unfair advantage for their competitors. Competitors can use such
99 information to impair full and fair competition and impede
100 competition in the wireless marketplace to the disadvantage of
101 consumers of wireless services. Thus, the public and private
102 harm in disclosing this information significantly outweighs any
103 public benefit derived from disclosure and the ability of the
104 public to scrutinize or monitor agency action is not diminished
105 by nondisclosure of this information.

106 Section 4. This act shall take effect on the same date that
107 SB ____ or similar legislation takes effect, if such legislation
108 is adopted in the same legislative session or an extension
109 thereof and becomes law.

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-6-14

Meeting Date

Topic Prepaid Wireless

Bill Number 292
(if applicable)

Name Jon Costello

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 119 S. Monroe
Street

Phone 681-6788

Tallahassee FL 72701
City State Zip

E-mail Jon@rupham.com

Speaking: For Against Information

Representing T-Mobile

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)

3/6/14

Meeting Date

Topic

Bill

Bill Number

292

(if applicable)

Name

Frank Meiners

Amendment Barcode

(if applicable)

Job Title

Address

50 Box 1635

Street

Phone

591 0177

City

Tall

State

32303

Zip

E-mail

frank@chemail.com

Speaking:

For

Against

Information

Representing

AIF

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/14
Meeting Date

292

Topic 894

Bill Number ~~2511~~ _____
(if applicable)

Name Paula Matus

Amendment Barcode _____
(if applicable)

Job Title Area Manager

Address _____
Street

Phone 850 591-6002

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing ATT

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.6.14
Meeting Date

Topic Public Records/Prepaid Wireless Bill Number 292
(if applicable)

Name E 911 Christie Pontis Amendment Barcode 674716
(if applicable)

Job Title Govt. Relations

Address 315 s. Calhoun st, Ste 500 Phone 850-599-1073
Street

TLH 32301 E-mail _____
City State Zip

Speaking: For Against Information

Representing CenturyLink

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 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
Committee on Governmental Oversight and Accountability
CC: Joe McVaney, Staff Director
Bethany Jones, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to Agenda SB 292 – Public Records/Prepaid Wireless E911 Fee

Date: January 14, 2014

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 cursive script 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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 948

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: Foreign Investments

DATE: March 6, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | McKay | McVaney | GO | Fav/CS |
| 2. | | | AP | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 948 modifies the Protecting Florida's Investments Act (PFIA), which requires the State Board of Administration (SBA) to identify and divest from assets in foreign companies doing business in Iran and Sudan, by providing that SBA investment in exchange-traded funds will not be subject to the divestiture requirements. The bill also makes terminology changes to reflect that South Sudan is now an independent nation.

The bill allows the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, an increase from the current maximum of 35 percent.

The bill also provides that investments by a domestic insurer in a company included on the Iran and Sudan scrutinized company lists must be treated as nonadmitted assets under the Florida Insurance Code. Such investments must be reported to the Office of Insurance Regulation and must be divested.

II. Present Situation:

State Board of Administration Investing Duties

The State Board of Administration (SBA) is created in Art. IV, s. 4 (e) of the State Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately \$151 billion, or 88 percent, of the \$173 billion in assets managed by the SBA, as of November 30, 2013. The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees may choose in lieu of the Pension Plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues¹.

In investing assets, the SBA follows the Florida Statutes' fiduciary standards of care, subject to certain limitations.² Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. Some of the key guidelines in the "legal list" specific to the investment of FRS Pension Plan assets include:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 35 percent of assets should be invested in foreign corporate or commercial securities or obligations³.

¹ State Board of Administration "Monthly Performance Report to the Trustees" as of November 30, 2013, issued January 13, 2014.

² Section 215.44, F.S.

³ This provision in s. 215.47(20), F.S., permitting the SBA to invest up to 35 percent of any fund in foreign securities or bonds is an SBA-specific exception to the general requirement in s. 215.47(5), F.S., that no more than 25 percent of any fund may be invested in foreign securities or bonds. The SBA exception is located in s. 215.47(20), F.S., because s. 112.661(5)(a), F.S., subjects local retirement systems and plans to the limitations in s. 215.47(5), F.S.

- No more than 10 percent⁴ of assets should be invested in alternative investments,⁵ alternative investment vehicles,⁶ and other non publicly-traded investments.

Exchange-Traded Funds

Exchange-traded funds (ETFs) are a type of exchange-traded investment product. ETFs offer investors a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. Unlike mutual funds, however, ETF shares are traded on a national stock exchange and at market prices that may or may not be the same as the net asset value of the shares. ETFs were initially designed to track the performance of specific U.S. equity indexes; those types of index-based ETFs continue to be the predominant type of ETF offered and sold in the United States. Newer ETFs, however, also seek to track indexes of fixed-income instruments and foreign securities.⁷

The SBA does not currently invest in ETFs, and Ch. 215, F.S., does not address the use of ETFs by the SBA.

Protecting Florida Investments Act

In 2007, the Legislature enacted⁸ the Protecting Florida's Investments Act (PFIA). The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities⁹ and are required to divest those securities if the companies¹⁰ do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of entities or business associations.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA, including:

⁴ The cap on alternative investments was last changed in 2008, when it was raised from 5% to 10% by Ch. 2008-31, L.O.F.

⁵ An "alternative investment" is defined in s. 215.4401(3)(a)1., F.S., as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."

⁶ An "alternative investment vehicle" is defined in s. 215.4401(3)(a)2., F.S., as the "limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."

⁷ All of the information in this paragraph is from a Securities and Exchange Commission Investor Bulletin available at: <https://www.sec.gov/investor/alerts/etfs.pdf>, last visited on February 25, 2014.

⁸ Chapter 2007-88, L.O.F.; Senate Bill 2142.

⁹ Section 215.473(3)(c), F.S.

¹⁰ Section 215.473(3)(b), F.S.

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website¹¹, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations. Such correspondence continues semiannually.
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment. The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.
- Quarterly reporting of the following to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.¹² The report must include the following:
 - A summary of correspondence with engaged companies;
 - A listing of all investments sold, redeemed, divested, or withdrawn;

¹¹ The quarterly reports are available at

<http://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/PFIA/2013QuarterlyReports/tabid/1483/Default.aspx>

¹² Section 215.473(4)(b), F.S.

- A listing of all prohibited investments;
- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
 - Darfur genocide has been halted for at least 12 months;
 - Sanctions imposed against the Government of Sudan are revoked;
 - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;
 - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
 - Sanctions imposed against the government of Iran are revoked; or
 - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment. If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment. Such condition is required to be updated semiannually.

Sudan and South Sudan

Previous to the enactment of the PFIA in 2007, Sudan had been embroiled in a north-south civil war, until a Comprehensive Peace Agreement was signed in 2005. Southern Sudan was granted a six-year period of autonomy to be followed by a referendum on independence. That referendum was held in January 2011, and resulted in an overwhelming vote in favor of succession from Sudan. The southern Sudan region attained independence on July 9, 2011, as South Sudan.¹³

The PFIA in s. 215.473, F.S., contains references to Sudan that are now outdated and inaccurate, including details about the government structures of Sudan and the southern Sudan region as they existed in 2007.

¹³ Information from the CIA World Factbook, located at <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html>, last visited on February 25, 2014.

III. Effect of Proposed Changes:

SBA Investments in Foreign Securities

Section 1 amends s. 215.47, F.S., to allow the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, up from the current maximum of 35 percent.

Section 2 amends s. 215.473, F.S., by amending the definition of “indirect holdings” to clarify that the securities included are held in a comingled fund or other collective instrument, whether managed by an SBA employee or not. The bill provides that SBA investment in exchange-traded funds will not be subject to the divestiture requirements.

The bill also changes references in s. 215.473, F.S., to Sudan and South Sudan, to reflect current geopolitical reality, makes corresponding corrections to cross-references, and makes technical and grammatical changes.

Assets of Insurers

Section 3 creates s. 624.449, F.S., related to assets of insurers invested in companies doing business in Iran and Sudan. The bill provides that investments by a domestic insurer which are included on the SBA’s “Scrutinized Companies with Activities in Sudan List” and “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List” must be treated as nonadmitted assets. By June 30, 2014, and quarterly thereafter, the insurer must determine what investments it has in companies included on those lists.

Subsection (2) requires the insurer to provide to the Office of Insurance Regulation, quarterly, a list of all investments that the insurer has in the companies included on the “Scrutinized Companies with Activities in Sudan List” and “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.” The list must include the name of the issuer of the stock, bond, security, and other evidence of indebtedness.

Subsection (3) provides that within 36 months after a company’s appearance on the list created in subsection (2), the insurer must sell, redeem, divest, or withdraw all of the investments in the company.

Severability Clause and Effective Date

The bill provides that the invalidation of any one provision of the act does not affect other provisions that could still be given legal effect.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, Section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The single subject clause contains three requirements: that each law embrace only one subject, that the law may include any matter that is properly connected with the subject, and that the subject be briefly expressed in the title.¹⁴ The single subject of an act is to be derived from the short title.¹⁵ “A connection between a provision [in an act] and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.”¹⁶

The short title of this bill is “[a]n act relating to foreign investments,” and the bill contains provisions relating to the proportion of funds the SBA may invest in foreign securities, restrictions on SBA’s ability to invest in scrutinized foreign companies doing business in Iran and Sudan, and regulatory and divestiture requirements for insurers with investments in scrutinized foreign companies. If this bill were challenged under the single subject provision of the constitution, a court would apply a highly deferential standard of review.¹⁷

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

None.

B. Private Sector Impact:

The bill requires insurers with investments on the “Scrutinized Companies with Activities in Sudan List” and “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List” to divest themselves of those holdings.

C. Government Sector Impact:

Indeterminate.

¹⁴ *Franklin v. State*, 887 So.2d 1063, 1072, (Fla. 2004)

¹⁵ *Id.* at 1075.

¹⁶ *Id.* at 1078.

¹⁷ *Id.* at 1073.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates the insurer scrutinized company divestiture provision in Ch. 624, F.S., relating to the Insurance Code: Administration and General Provisions. Chapter 625, F.S., relates to Accounting, Investments, and Deposits by Insurers. More specifically, s. 625.031, F.S., specifies assets not allowed in any determination of the financial condition of an insurer. It is unclear whether the new divestiture provision in this bill ought to be referenced in s. 625.031, F.S.

VIII. Statutes Affected:

This bill substantially amends sections 215.47 and 215.473 of the Florida Statutes.

This bill creates section 624.449 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 by Governmental Oversight and Accountability on March 6, 2014:

The CS removes a definitional change that allows an affiliate or wholly owned subsidiary doing business in Sudan or Iran to not impact the scrutinized company status of the parent company. Current law will therefore be retained, which requires the actions of affiliates and subsidiaries to impact the parent company's scrutinized company status.

The CS also removes language unnecessary to the implementation of the insurer divestment provisions.

- B. **Amendments:**

None.



496202

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete lines 46 - 59

and insert:

(b) "Business operations" means engaging in commerce in any form in Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.



496202

11 (c) "Company" means a ~~any~~ sole proprietorship,
12 organization, association, corporation, partnership, joint
13 venture, limited partnership, limited liability partnership,
14 limited liability company, or other entity or business
15 association, including all wholly owned subsidiaries, majority-
16 owned subsidiaries, parent companies, or affiliates of such
17 entities or business associations, that exists for the purpose
18 of making profit.



531610

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 347 - 436

and insert:

624.449 Insurer investment in foreign companies.-

(1) Investments by a domestic insurer in companies included on the "Scrutinized Companies with Activities in Sudan List" and "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," compiled by the State Board of Administration pursuant to s. 215.473(2), shall be treated as



531610

11 nonadmitted assets. On or before June 30, 2014, and quarterly
12 thereafter, the insurer shall determine its investments in
13 companies included on these lists.

14 (2) The insurer shall provide to the office, on a quarterly
15 basis, a list of investments that the insurer has in companies
16 included on the "Scrutinized Companies with Activities in Sudan
17 List" and "Scrutinized Companies with Activities in the Iran
18 Petroleum Energy Sector List," including, but not limited to,
19 the name of the issuer and the stock, bond, security, and other
20 evidence of indebtedness.

21 (3) Within 36 months after a company's appearance on a list
22 compiled pursuant to subsection (2), the insurer shall sell,
23 redeem, divest, or withdraw all of its investments in the
24 company.

25
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete lines 12 - 16

29 and insert:

30 F.S.; providing that insurer investment in certain
31 foreign companies shall be treated as nonadmitted
32 assets; requiring insurers to identify, report, and
33 divest such investments within a specified period;
34 providing for

By Senator Ring

29-01018-14

2014948__

1 A bill to be entitled
 2 An act relating to foreign investments; amending s.
 3 215.47, F.S.; revising the percentage of investments
 4 that the State Board of Administration may invest in
 5 foreign securities; amending s. 215.473, F.S.;
 6 revising and providing definitions with respect to
 7 requirements that the board divest securities in which
 8 public moneys are invested in certain companies doing
 9 specified types of business in or with Sudan or Iran;
 10 revising exclusions from the divestment requirements;
 11 conforming cross-references; creating s. 624.449,
 12 F.S.; providing legislative intent; defining terms;
 13 providing that certain assets shall be treated as
 14 nonadmitted assets; requiring insurers to identify,
 15 report, and divest certain assets within a specified
 16 period; providing applicability; providing for
 17 severability; providing an effective date.

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

19 Section 1. Subsection (20) of section 215.47, Florida
 20 Statutes, is amended to read:

21 215.47 Investments; authorized securities; loan of
 22 securities.—Subject to the limitations and conditions of the
 23 State Constitution or of the trust agreement relating to a trust
 24 fund, moneys available for investments under ss. 215.44-215.53
 25 may be invested as follows:
 26

27 (20) Notwithstanding the provisions in subsection (5)
 28 limiting such investments to 25 percent of any fund, the board
 29

Page 1 of 16

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

29-01018-14

2014948__

30 may invest up to 50 ~~no more than 35~~ percent of any fund in
 31 corporate obligations and securities of any kind of a foreign
 32 corporation or a foreign commercial entity having its principal
 33 office located in any country other than the United States or
 34 its possessions or territories, not including United States
 35 dollar-denominated securities listed and traded on a United
 36 States exchange that are a part of the ordinary investment
 37 strategy of the board.

38 Section 2. Subsections (1) and (2), paragraph (e) of
 39 subsection (3), and subsection (5) of section 215.473, Florida
 40 Statutes, are amended to read:

41 215.473 Divestiture by the State Board of Administration;
 42 Sudan; Iran.—

43 (1) DEFINITIONS.—As used in this act, the term:

44 (a) "Active business operations" means all business
 45 operations that are not inactive business operations.

46 (b) "Business operations" means engaging in commerce in any
 47 form in Sudan or Iran, including, ~~but not limited to,~~ acquiring,
 48 developing, maintaining, owning, selling, possessing, leasing,
 49 or operating equipment, facilities, personnel, products,
 50 services, personal property, real property, or any other
 51 apparatus of business or commerce.

52 (c) "Company" means a ~~any~~ sole proprietorship,
 53 organization, association, corporation, partnership, joint
 54 venture, limited partnership, limited liability partnership,
 55 limited liability company, or other entity or business
 56 association, ~~including all wholly owned subsidiaries, majority-~~
 57 ~~owned subsidiaries, parent companies, or affiliates of such~~
 58 ~~entities or business associations,~~ that exists for the purpose

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59 of making profit.

60 (d) "Complicit" means taking actions during any preceding
61 20-month period which have directly supported or promoted the
62 genocidal campaign in Darfur, including, ~~but not limited to,~~
63 preventing Darfur's victimized population from communicating
64 with each other; encouraging Sudanese citizens to speak out
65 against an internationally approved security force for Darfur;
66 actively working to deny, cover up, or alter the record on human
67 rights abuses in Darfur; or other similar actions.

68 (e) "Direct holdings" in a company means all securities of
69 that company that are held directly by the public fund or in an
70 account or fund in which the public fund owns all shares or
71 interests.

72 (f) "Government of Iran" means the government of Iran, its
73 instrumentalities, and companies owned or controlled by the
74 government of Iran.

75 (g) "Government of South Sudan" means the Republic of South
76 Sudan, that has its capital in Juba, South Sudan.

77 (h) ~~(g)~~ "Government of Sudan" means the Republic of the
78 Sudan that has its capital ~~government~~ in Khartoum, Sudan, ~~that~~
79 ~~is led by the National Congress Party, formerly known as the~~
80 ~~National Islamic Front, or any successor government formed on or~~
81 ~~after October 13, 2006, including the coalition National Unity~~
82 ~~Government agreed upon in the Comprehensive Peace Agreement for~~
83 ~~Sudan, and does not include the regional government of southern~~
84 ~~Sudan.~~

85 (i) ~~(h)~~ "Inactive business operations" means the mere
86 continued holding or renewal of rights to property previously
87 operated for the purpose of generating revenues but not

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88 presently deployed for such purpose.

89 (j) ~~(i)~~ "Indirect holdings" in a company means all
90 securities of that company that are held in a commingled ~~an~~
91 ~~account or fund or other collective investment~~, such as a mutual
92 fund, ~~managed by one or more persons not employed by the public~~
93 ~~fund~~, in which the public fund owns shares or interests together
94 with other investors not subject to ~~the provisions of this~~
95 section ~~act~~.

96 (k) ~~(j)~~ "Iran" means the Islamic Republic of Iran.

97 (l) ~~(k)~~ "Marginalized populations of Sudan" include, but are
98 not limited to, the portion of the population in the Darfur
99 region that has been genocidally victimized; the portion of the
100 population of South ~~southern~~ Sudan victimized by Sudan's north-
101 south civil war; the Beja, Rashidiya, and other similarly
102 underserved groups of eastern Sudan; the Nubian and other
103 similarly underserved groups in Sudan's Abyei, Southern Blue
104 Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir,
105 and other similarly underserved groups of northern Sudan.

106 (m) ~~(l)~~ "Military equipment" means weapons, arms, military
107 supplies, and equipment that may readily be used for military
108 purposes, including, but not limited to, radar systems,
109 military-grade transport vehicles, or supplies or services sold
110 or provided directly or indirectly to any force actively
111 participating in armed conflict in Sudan.

112 (n) ~~(m)~~ "Mineral-extraction activities" include the
113 exploring, extracting, processing, transporting, or wholesale
114 selling or trading of elemental minerals or associated metal
115 alloys or oxides (ore), including gold, copper, chromium,
116 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,

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117 and zinc, as well as facilitating such activities, including
 118 providing supplies or services in support of such activities.

119 ~~(o)-(n)~~ "Oil-related activities" include, but are not
 120 limited to, owning rights to oil blocks; exporting, extracting,
 121 producing, refining, processing, exploring for, transporting,
 122 selling, or trading of oil; constructing, maintaining, or
 123 operating a pipeline, refinery, or other oil-field
 124 infrastructure; and facilitating such activities, including
 125 providing supplies or services in support of such activities,
 126 except that the mere retail sale of gasoline and related
 127 consumer products is not considered an oil-related activity.

128 ~~(p)-(o)~~ "Petroleum resources" means petroleum, petroleum
 129 byproducts, or natural gas.

130 ~~(q)-(p)~~ "Power-production activities" means a ~~any~~ business
 131 operation that involves a project commissioned by the National
 132 Electricity Corporation (NEC) of Sudan or other similar entity
 133 of the government of Sudan whose purpose is to facilitate power
 134 generation and delivery, including, but not limited to,
 135 establishing power-generating plants or hydroelectric dams,
 136 selling or installing components for the project, providing
 137 service contracts related to the installation or maintenance of
 138 the project, as well as facilitating such activities, including
 139 providing supplies or services in support of such activities.

140 ~~(r)-(q)~~ "Public fund" means all funds, assets, trustee, and
 141 other designates under the State Board of Administration
 142 pursuant to chapter 121.

143 ~~(s)-(r)~~ "Scrutinized active business operations" means
 144 active business operations that result ~~have resulted~~ in a
 145 company becoming a scrutinized company.

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146 ~~(t)-(s)~~ "Scrutinized business operations" means business
 147 operations that result ~~have resulted~~ in a company becoming a
 148 scrutinized company.

149 ~~(u)-(t)~~ "Scrutinized company" means a ~~any~~ company that meets
 150 any of the following criteria:

151 1. The company has business operations that involve
 152 contracts with or provision of supplies or services to the
 153 government of Sudan, companies in which the government of Sudan
 154 has a ~~any~~ direct or indirect equity share, consortiums or
 155 projects commissioned by the government of Sudan, or companies
 156 involved in consortiums or projects commissioned by the
 157 government of Sudan, and:

158 a. More than 10 percent of the company's revenues or assets
 159 linked to Sudan involve oil-related activities or mineral-
 160 extraction activities; less than 75 percent of the company's
 161 revenues or assets linked to Sudan involve contracts with or
 162 provision of oil-related or mineral-extracting products or
 163 services to the ~~regional~~ government of South ~~southern~~ Sudan ~~or a~~
 164 ~~project or consortium created exclusively by that regional~~
 165 ~~government~~; and the company has failed to take substantial
 166 action; or

167 b. More than 10 percent of the company's revenues or assets
 168 linked to Sudan involve power-production activities; less than
 169 75 percent of the company's power-production activities include
 170 projects whose intent is to provide power or electricity to the
 171 marginalized populations of Sudan; and the company has failed to
 172 take substantial action.

173 2. The company is complicit in the Darfur genocide.

174 3. The company supplies military equipment within Sudan,

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 175 unless it clearly shows that the military equipment cannot be
 176 used to facilitate offensive military actions in Sudan or the
 177 company implements rigorous and verifiable safeguards to prevent
 178 use of that equipment by forces actively participating in armed
 179 conflict. Examples of safeguards include post-sale tracking of
 180 such equipment by the company, certification from a reputable
 181 and objective third party that such equipment is not being used
 182 by a party participating in armed conflict in Sudan, or sale of
 183 such equipment solely to the ~~regional~~ government of South
 184 ~~southern~~ Sudan or any internationally recognized peacekeeping
 185 force or humanitarian organization.

186 4. The company has business operations that involve
 187 contracts with or provision of supplies or services to the
 188 government of Iran, companies in which the government of Iran
 189 has any direct or indirect equity share, consortiums, or
 190 projects commissioned by the government of Iran, or companies
 191 involved in consortiums or projects commissioned by the
 192 government of Iran and:

193 a. More than 10 percent of the company's total revenues or
 194 assets are linked to Iran and involve oil-related activities or
 195 mineral-extraction activities, ~~and~~ and the company has failed to
 196 take substantial action; or

197 b. The company has, with actual knowledge, on or after
 198 August 5, 1996, made an investment of \$20 million or more, or
 199 any combination of investments of at least \$10 million each,
 200 which in the aggregate equals or exceeds \$20 million in any 12-
 201 month period, and which directly or significantly contributes to
 202 the enhancement of Iran's ability to develop the petroleum
 203 resources of Iran.

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 204 ~~(v) (u)~~ "Social-development company" means a company whose
 205 primary purpose in Sudan is to provide humanitarian goods or
 206 services, including medicine or medical equipment; agricultural
 207 supplies or infrastructure; educational opportunities;
 208 journalism-related activities; information or information
 209 materials; spiritual-related activities; services of a purely
 210 clerical or reporting nature; food, clothing, or general
 211 consumer goods that are unrelated to oil-related activities;
 212 mineral-extraction activities; or power-production activities.

213 ~~(w) (v)~~ "Substantial action specific to Iran" means
 214 adopting, publicizing, and implementing a formal plan to cease
 215 scrutinized business operations within 1 year and to refrain
 216 from ~~any~~ such new business operations.

217 ~~(x) (w)~~ "Substantial action specific to Sudan" means
 218 adopting, publicizing, and implementing a formal plan to cease
 219 scrutinized business operations within 1 year and to refrain
 220 from ~~any~~ such new business operations; undertaking humanitarian
 221 efforts in conjunction with an international organization, the
 222 government of Sudan, the ~~regional~~ government of South ~~southern~~
 223 Sudan, or a nonprofit entity evaluated and certified by an
 224 independent third party to be substantially in a relationship to
 225 the company's Sudan business operations and of benefit to one or
 226 more marginalized populations of Sudan; or, through engagement
 227 with the government of Sudan, materially improving conditions
 228 for the genocidally victimized population in Darfur.

229 (2) IDENTIFICATION OF COMPANIES.—

230 (a) Within 90 days after June 8, 2007 ~~the effective date of~~
 231 ~~this act~~, the public fund shall make its best efforts to
 232 identify all scrutinized companies in which the public fund has

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233 direct or indirect holdings or could possibly have such holdings
 234 in the future. Such efforts include:

235 1. Reviewing and relying, as appropriate in the public
 236 fund's judgment, on publicly available information regarding
 237 companies having business operations in Sudan, including
 238 information provided by nonprofit organizations, research firms,
 239 international organizations, and government entities;

240 2. Contacting asset managers contracted by the public fund
 241 ~~which that~~ invest in companies having business operations in
 242 Sudan; or

243 3. Contacting other institutional investors that have
 244 divested from or engaged with companies that have business
 245 operations in Sudan.

246 4. Reviewing the laws of the United States regarding the
 247 levels of business activity that would cause application of
 248 sanctions for companies conducting business or investing in
 249 countries that are designated state sponsors of terror.

250 (b) By the first meeting of the public fund following the
 251 90-day period described in paragraph (a), the public fund shall
 252 assemble all scrutinized companies that fit criteria specified
 253 in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into
 254 a "Scrutinized Companies with Activities in Sudan List" and
 255 ~~shall assemble~~ all scrutinized companies that fit criteria
 256 specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a "Scrutinized
 257 Companies with Activities in the Iran Petroleum Energy Sector
 258 List."

259 (c) The public fund shall update and make publicly
 260 available quarterly the Scrutinized Companies with Activities in
 261 Sudan List and the Scrutinized Companies with Activities in the

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262 Iran Petroleum Energy Sector List based on evolving information
 263 from, among other sources, those listed in paragraph (a).

264 (d) Notwithstanding the provisions of this ~~section act~~, a
 265 social-development company that is not complicit in the Darfur
 266 genocide is not considered a scrutinized company under
 267 subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~,
 268 or subparagraph (1)(u)3 ~~(1)(t)3.~~

269 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
 270 following procedure for assembling companies on the Scrutinized
 271 Companies with Activities in Sudan List and the Scrutinized
 272 Companies with Activities in the Iran Petroleum Energy Sector
 273 List:

274 (e) *Excluded securities.*—

275 1. Notwithstanding the provisions of this act, paragraphs
 276 (b) and (c) do not apply to indirect holdings in actively
 277 managed investment funds. However, the public fund shall submit
 278 letters to the managers of such investment funds containing
 279 companies that have scrutinized active business operations
 280 requesting that they consider removing such companies from the
 281 fund or create a similar actively managed fund having indirect
 282 holdings devoid of such companies. If the manager creates a
 283 similar fund, the public fund shall replace all applicable
 284 investments with investments in the similar fund in an expedited
 285 timeframe consistent with prudent investing standards. For the
 286 purposes of this section, a private equity fund is deemed to be
 287 an actively managed investment fund.

288 2. Notwithstanding the provisions of this section,
 289 paragraphs (b) and (c) do not apply to exchange-traded funds.

290 (5) EXPIRATION.—This act expires upon the occurrence of all

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291 of the following:

292 (a) If any of the following occur, the public fund shall no
 293 longer scrutinize companies according to subparagraphs (1)(u)1.,
 294 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the
 295 Scrutinized Companies with Activities in Sudan List, shall cease
 296 engagement and divestment of such companies, and may reinvest in
 297 such companies if as long as such companies do not satisfy the
 298 criteria for inclusion in the Scrutinized Companies with
 299 Activities in the Iran Petroleum Energy Sector List:

300 1. The Congress or President of the United States,
 301 affirmatively and unambiguously states, by means including, but
 302 not limited to, legislation, executive order, or written
 303 certification from the President to Congress, that the Darfur
 304 genocide has been halted for at least 12 months;

305 2. The United States revokes all sanctions imposed against
 306 the government of Sudan;

307 3. The Congress or President of the United States
 308 affirmatively and unambiguously states, by means including, but
 309 not limited to, legislation, executive order, or written
 310 certification from the President to Congress, that the
 311 government of Sudan has honored its commitments to cease attacks
 312 on civilians, demobilize and demilitarize the Janjaweed and
 313 associated militias, grant free and unfettered access for
 314 deliveries of humanitarian assistance, and allow for the safe
 315 and voluntary return of refugees and internally displaced
 316 persons; or

317 4. The Congress or President of the United States
 318 affirmatively and unambiguously states, by means including, but
 319 not limited to, legislation, executive order, or written

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320 certification from the President to Congress, that mandatory
 321 divestment of the type provided for in this section ~~act~~
 322 interferes with the conduct of United States foreign policy.

323 (b) If any of the following occur, the public fund shall no
 324 longer scrutinize companies according to subparagraph (1)(u)4.
 325 ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies
 326 with Activities in the Iran Petroleum Energy Sector List and
 327 shall cease engagement, investment prohibitions, and divestment.
 328 The public fund may reinvest in such companies if as long as
 329 such companies do not satisfy the criteria for inclusion in the
 330 Scrutinized Companies with Activities in Sudan List:

331 1. The Congress or President of the United States
 332 affirmatively and unambiguously states, by means including, but
 333 not limited to, legislation, executive order, or written
 334 certification from the President to Congress, that the
 335 government of Iran has ceased to acquire weapons of mass
 336 destruction and support international terrorism;

337 2. The United States revokes all sanctions imposed against
 338 the government of Iran; or

339 3. The Congress or President of the United States
 340 affirmatively and unambiguously declares, by means including,
 341 but not limited to, legislation, executive order, or written
 342 certification from the President to Congress, that mandatory
 343 divestment of the type provided for in this section ~~act~~
 344 interferes with the conduct of United States foreign policy.

345 Section 3. Section 624.449, Florida Statutes, is created to
 346 read:

347 624.449 Assets of insurers; foreign states sponsoring
 348 terrorism.-

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349 (1) The Legislature finds that:

350 (a) The federal Securities and Exchange Commission has
 351 determined that business activities in foreign nations
 352 sponsoring terrorism, such as Iran and Sudan, which are subject
 353 to sanctions by the United States may materially harm the share
 354 value of foreign companies. Shares in these foreign companies
 355 may be held in the portfolio of insurance companies issuing
 356 policies to consumers in this state.

357 (b) Publicly traded companies in the United States are
 358 substantially restricted from doing business in or with foreign
 359 nations that the United States Department of State has
 360 identified as sponsoring terrorism.

361 (c) Identifying companies with business activities in
 362 foreign nations that sponsor terrorism and ensuring that those
 363 investments are financially sound is an important public policy
 364 priority.

365 (d) It is the governments of Iran and Sudan, and not the
 366 people of Iran or Sudan, that support terrorism and commit
 367 egregious violations of human rights under which their own
 368 citizens are required to live.

369 (2) As used in this section, the term:

370 (a) "Business operations" means maintaining, selling, or
 371 leasing equipment, facilities, personnel, or any other apparatus
 372 of business or commerce in Iran or Sudan, including the
 373 ownership or possession of real or personal property located in
 374 Iran or Sudan.

375 (b) "Company" means a sole proprietorship, organization,
 376 association, corporation, partnership, venture, or other entity,
 377 including its subsidiary or affiliate, that exists for

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378 profitmaking purposes or to otherwise secure economic advantage.
 379 The term includes a company owned or controlled, directly or
 380 indirectly, by the government of Iran or Sudan which is
 381 established or organized under the laws of or has its principal
 382 place of business in the Islamic Republic of Iran or the
 383 Republic of the Sudan.

384 (c) "Government of Iran" has the same meaning as provided
 385 in s. 215.473. The term includes an individual, company, or
 386 public agency located in Iran that provides material or
 387 financial support to the Islamic Republic of Iran.

388 (d) "Government of South Sudan" has the same meaning as
 389 provided in s. 215.473.

390 (e) "Government of Sudan" has the same meaning as provided
 391 in s. 215.473.

392 (f) "Invest" or "investment" means the purchase, ownership,
 393 or control of stock of a company, association, or corporation;
 394 the capital stock of a mutual water company or corporation;
 395 bonds issued by the government or a political subdivision of
 396 Iran or Sudan; corporate bonds or other debt instruments issued
 397 by a company; or the commitment of funds or other assets to a
 398 company, including a loan or extension of credit to that
 399 company.

400 (g) "Iran" means the Islamic Republic of Iran or a
 401 territory under the administration or control of Iran.

402 (h) "South Sudan" means the Republic of South Sudan, that
 403 has its capital in Juba, South Sudan.

404 (i) "Sudan" means the Republic of the Sudan that has its
 405 capital in Khartoum, Sudan.

406 (3) Investments by a domestic insurer included on the lists

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407 of companies compiled by the State Board of Administration
 408 pursuant to s. 215.473 shall be treated as nonadmitted assets.
 409 On or before June 30, 2014, and quarterly thereafter, the
 410 insurer shall determine what investments it has in companies
 411 included on the list.

412 (4) The insurer shall provide to the Office of Insurance
 413 Regulation, on a quarterly basis, a list of investments that the
 414 insurer has in companies included on the list described in
 415 subsection (3), including, but not limited to, the issuer, by
 416 name, of the stock, bond, security, and other evidence of
 417 indebtedness.

418 (5) Within 36 months after a company's appearance on a list
 419 compiled pursuant to subsection (4), the insurer shall sell,
 420 redeem, divest, or withdraw all of its investments in the
 421 company.

422 (6) (a) This section ceases to apply with respect to Iranian
 423 assets upon the occurrence of both of the following:

424 1. Iran is removed from the United States Department of
 425 State's list of countries that have been determined to
 426 repeatedly provide support for acts of international terrorism.

427 2. Pursuant to federal law, the President of the United
 428 States determines and certifies to the United States Congress
 429 that Iran has ceased its efforts to design, develop,
 430 manufacture, or acquire a nuclear explosive device or related
 431 materials and technology.

432 (b) This section ceases to apply with respect to Sudanese
 433 assets if the government of Sudan is removed from the United
 434 States Department of State's list of countries that have been
 435 determined to repeatedly provide support for acts of

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436 international terrorism.

437 Section 4. If any provision of this act or the application
 438 thereof to any person or circumstance is held invalid, the
 439 invalidity does not affect other provisions or applications of
 440 the act which can be given effect without the invalid provision
 441 or application, and to this end the provisions of this act are
 442 declared severable.

443 Section 5. 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)

3 16 2014

Meeting Date

Topic _____

Bill Number 948

(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
APPEARANCE RECORD

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

3/6/14

Meeting Date

Topic SBA Investments

Bill Number SB 948
(if applicable)

Name Ash Williams

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 1401 Admontage Blvd

Phone 413-1253

Street

Salabasse

FL

32308

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing State Board of Administration

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7064

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Public Records and Meetings

DATE: March 3, 2014

REVISED: 03/06/14

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---------|----------------|-----------|---------------------------------------|
| 1. Kim | McVaney | | GO Submitted as Committee Bill |

I. Summary:

SPB 7064 substantially amends the public records and public meetings laws. This bill clarifies how the public may access records and how agencies should respond. This bill also outlines what an agency may charge as a service fee and incorporates the cost of litigating attorney fees if an agency loses an enforcement action. This bill places additional requirements on organizations that accept membership fees from the government and on businesses contracted with the government.

The bill:

- Requires organizations that accept public funds for membership dues or fees keep records related to those funds and members. Organizations will also be required to make records it gives its members or the public available for inspection and copying.
- Provides definitions for “confidential and exempt” and “exempt” records consistent with court interpretations.
- Provides that public records requests do not need to be made in writing unless there is a specific statutory requirement present. If a public records request must be made in writing the records custodian must provide the statutory citation to the requestor.
- Provides that the fee charged for satisfying a voluminous or complicated public records request is limited to the cost of the lowest paid personnel capable of performing the work, and excludes employer-paid benefits.
- Requires a private contractor acting on behalf of a public agency to inform the agency before denying a public records request and to notify the agency if the private contractor is sued for failing to provide public records.
- Requires agencies to train their employees regarding Florida’s public records laws.
- Specifies that the attorney’s fees to which a prevailing public records plaintiff is entitled includes the fees incurred in litigating entitlement to and amount of attorney fees. Courts will be required to award the costs of enforcement, including attorney’s fees, on each count on which the plaintiff prevailed.
- Relieves a plaintiff in a public records or public meetings enforcement action who claims attorney fees from being required to serve the Department of Financial Service with the claim

for attorney fees. A state agency covered by the Department of Financial Services will be given the option of informing the Department of Financial Services that a claim for attorney fees has been filed.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ 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 provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Section 119.01 General state policy on public records.¹³

Section 119.01(3), F.S., states that if state funds are used to pay dues for any person or organization, the financial and membership records of that organization are subject to public inspection and copying.

Section 119.07, F.S. Inspection and copying of records; photographing public records: fees; exemptions.

Section 119.07(1), F.S., describes the duties of the custodian of public records. These duties include acknowledging a public records request and responding in good faith.¹⁴ A records custodian must also redact exempt information and provide the remainder to the public.¹⁵ If a records custodian believes that all or part of a record is exempt from public inspection, the records custodian is required to state the basis and statutory citation of the exemption.¹⁶

Section 119.07(4), F.S., currently permits the records custodian to charge fees for making copies or for supervising the public while they inspect or photograph public records. If the nature or volume of a public records request requires extensive use of technology, clerical staff or supervisory personal, an agency may charge a reasonable special service charge in addition to copying fees.¹⁷

⁹ 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).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.01, F.S., provides that it is the general policy of the state of Florida that all state, agency, county and municipal records are open to the public for inspection and copying. This section provides an overview of an agency's duty to provide records to the public.

¹⁴ Section 119.07(1)(c), F.S.

¹⁵ Section 119.07(1)(d), F.S.

¹⁶ Section 119.07(1)(e), F.S.

¹⁷ Section 119.07(4)(d), F.S. Section 119.07(4)(d), F.S. also provides that the special service charge may include "the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required." Florida has long required those who seek public records "defray the extraordinary costs associated with their requests." *Board of County Commissioners of Highland County v. Colby*, 976 So.2d 31,35 (2008). The court found "the statute at issue here employs the term "labor cost," the plain meaning of which is more inclusive than the

Section 119.0701, F.S. Contracts; public records.

Agencies can contract with private businesses to offer services that the agency would normally perform. Section 119.0701, F.S., requires a business that acts on behalf of a government agency to comply with public records laws.

Section 119.12, F.S. Attorney fees.

If an agency fails to comply with a public records request, the requestor can sue the agency to get access to public records in an enforcement action. The requestor can also sue the agency for “the reasonable costs of the enforcement,” which include reasonable attorney fees.¹⁸ When the requestor sues a state agency for attorney fees, he or she is also required to serve the Department of Financial Services.¹⁹

Section 286.011, F.S. Public meetings and records; public inspection; criminal and civil penalties

Chapter 286, F.S., requires that government boards and commission must be open to the public. Failure to provide reasonable notice to the public invalidates any official business conducted during a meeting.²⁰ Section 286.011(4), F.S., provides that a person or entity can sue a board or commission in order to enforce public meetings laws and for attorney fees. Section 286.011(4), F.S., permits the court to award attorney fees to a plaintiff if a board or commission violates public meetings laws and also permits the court to award attorney fees to the board or commission if a plaintiff files a lawsuit frivolously or in bad faith.

III. Effect of Proposed Changes:

Section 1 amends s. 119.01(3), F.S., to require organizations that accept public funds as membership dues make records they provide to their members or to the public available for public inspection and copying. Information protected by state or federal law will remain exempt from disclosure. An editorial change has also been made which eliminates enumerated organizations in favor of the definition of a legal person.

Section 2 amends s. 119.011, F.S., to codify the current case law interpretation of the terms “confidential and exempt” and “exempt.”²¹ The term “confidential and exempt” is defined as a record that is statutorily exempt and can only be released to the people or entities specified in the exemption. The term “exempt” is defined as a record which is statutorily exempt, but may be

words “wages” or “salary.” That benefits may be a significant component of labor costs is widely understood. *Board of County Commissioners*, 976 So.2d at 36.

¹⁸ Section 119.12, F.S.

¹⁹ Section 284.30, F.S. Generally, when a plaintiff sues a state agency for attorney fees, the plaintiff is required to serve a copy of the claim for attorney fees on the Department of Financial Services State Risk Management Trust Fund in addition to serving a copy of the lawsuit on the agency itself. The Department of Financial Services is entitled to participate in the defense of the state in a claim for attorney fees and any appeal. See also section 284.31, F.S.

²⁰ Section 286.011(1), F.S.

²¹ 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).

released at the discretion of the records custodian. The records custodian will be required to determine if there is a statutory or substantial need for disclosure before releasing a record. In addition, the elements of “active” (as they relate to criminal intelligence and investigative information) are placed together for clarity.

Section 3 amends s. 119.07(1), F.S., to provide that public records request are not required to be made in writing.²² If the law requires a public records request to be made in writing, the records custodian must provide the statutory citation to the requestor.²³ Special service charges must be limited to the lowest paid personnel capable of providing the needed assistance and may not include the cost of health insurance premiums or other benefits paid by an agency.

Section 4 amends s. 119.0701, F.S., to require a business acting on behalf of an agency to notify the agency before denying a public records request. The business is required to inform the agency of a public records enforcement lawsuit.

Section 5 creates s. 119.0702, F.S., to require agencies to provide public records training to each of their employees, commensurate with his or her duties.

Section 6 amends s. 119.12, F.S., to expand the definition of “reasonable cost enforcement” to include the attorney fees incurred when a requestor sues for attorney fees. Courts must award attorney fees to the requestor on the portions of the enforcement action he or she won. This new law does not entitle an agency to recover costs or attorney fees when the agency prevails. Under current law, anyone who sues the State of Florida or its agencies for attorney fees must serve a copy of the claim for attorney fees on the Department of Financial Services. This section amends the law so that a plaintiff in a public records enforcement action who also claims attorney fees will not be required to serve a copy of the claim for attorney fees on the Department of Financial Services. If an agency intends to have the Department of Financial Service cover its attorney fees, the agency will be required to inform the Department of Financial Services.

Section 7 amends s. 286.011, F.S., to eliminate the requirement that a plaintiff suing a state entity to enforce public meetings laws and claiming attorney fees serve a copy of the claim for attorney fees on the Department of Financial Services. If a state entity intends to have the Department of Financial Services cover its attorney fees, the state entity must inform the Department of Financial Services of the claim for attorney fees.

Section 8 amends s. 257.35, F.S., to correct cross references and to make editorial changes.

Section 9 amends s. 383.402, F.S., to correct cross references and to make editorial changes.

Section 10 amends s. 497.140, F.S., to correct cross references.

Section 11 amends s. 627.311, F.S., to correct cross references.

²² In the footnote, the court stated “[t]here is no requirement in the Public Records Act that requests for records must be in writing.” *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So.2d 302 (Fla. 3d DCA 2001), rehearing denied.

²³ Section 119.07(1)(e), F.S., similarly provides that a records custodian must provide the basis and statutory citation if the records custody believes that all or part of a record is exempt from public inspection and copying.

Section 12 amends s. 627.351, F.S., to correct cross references and to make editorial changes.

Section 13 amends s. 943.031, F.S., to make editorial changes.

Section 14 amends s. 943.0313, F.S., to correct cross references and to make editorial changes.

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:

This bill substantially changes public records law and public meetings law but does not create any new public records or public meetings exemptions. This bill does not require a two-thirds vote.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill does not appear to require new taxes.

Section 119.01(3)(b)2., F.S., as amended, increases the types of records which must be retained and produced as public records by an entity that accepts state funds for membership dues. It is unknown if costs will be passed on to members in the form of higher fees or dues.

It remains to be determined if the special service charges currently being assessed to the public pursuant to s. 119.07(4)(d), F.S., will be reduced by this bill.

B. Private Sector Impact:

Section 119.01(3)(b)2., F.S., as amended, increases the types of records which must be retained and produced as public records by an organization that accepts state funds as membership dues. An organization will be required to make those records available for public inspection and copying and therefore personnel costs and copying requirements may increase expenditures.

As amended, s. 119.0701, F.S., may increase costs on the private sector. Existing contracts with government agencies and businesses may need to be renegotiated since this statute imposes new duties on businesses.

Section 119.07(4)(d), F.S., as amended, may reduce the special services charges assessed to members of the public. It is unknown if agencies have been including their employer contributions to their employees' health insurance or premiums when assessing special service charges.

Section 119.12, F.S., as amended, may decrease the cost of filing an enforcement action and the associated attorney fees since a plaintiff will not be obligated to serve legal notice on the Department of Financial Services when claiming attorney fees.

Businesses acting on behalf of a government agency may experience increases in costs similar to those that the government sector may encounter if this bill is enacted.

C. Government Sector Impact:

Section 119.01(3)(b)2., F.S., as amended, increases the types of records which must be kept and produced as public records by an entity that accepts state funds for membership dues. It is unknown if costs will be passed on to members in the form of higher fees or dues.

Section 119.07(1)(c), F.S., as amended, puts an additional burden on a records custodian by requiring the custodian to provide the statutory citation for each public records request which must be made in writing. Records custodians may have to spend more time consulting with legal counsel in order to meet this statutory requirement, but it is unclear if this will increase government expenditure.

Section 119.07(4)(d), F.S., as amended, may require government entities expend resources in order to assess and calculate which clerical or supervisory staff is the lowest paid person capable of providing requisite supervision if a public record is being inspected or resources are used. If a municipality or a county currently includes the cost of employee benefits as part of its special service charge, then its ability to defray the cost of providing public records may be adversely impacted.²⁴

It is unknown if state agencies have been including their employer contributions to their employees' health insurance or premiums when assessing special service charges. If a state agency has been including the cost of employee benefits as part of its special service charge, then its ability to defray the cost of providing public records may be adversely impacted.²⁵

As amended, Section 119.0701, F.S., may increase government expenditure because existing contracts may have to be renegotiated or amended.

²⁴ See s. 119.07(4)(d), F.S. and *Board of County Commissioners of Highlands County v. Colby*, 976 So.2d 31 (2008).

²⁵ See s. 119.07(4)(d), F.S. An agency could have relied on *Board of County Commissioners of Highlands County v. Colby*, 976 So.2d 31 (2008) and included benefits when calculating a special service charge.

Section 119.0702, F.S., which is a new provision, may increase costs on agencies because the agency will be statutorily required to train all of their employees about public records laws.

Section 119.12, F.S., as amended, may increase the amount of attorney fees paid by agencies. It is unclear if the state or agencies will experience an increase in costs if agencies are required to provide notice to Department of Financial Services when a claim for attorney fees are filed. It is unclear whether an agency's risk management allotment will be affected if it fails to provide timely notice to the Department of Financial Services when a claim for attorney fees is made.

Section 284.011(4)(b), F.S., as amended, may increase the amount of attorney fees paid by agencies. It is unclear if the state or agencies will experience an increase in costs if agencies are required to provide notice to Department of Financial Services when a claim for attorney fees is filed. It is unclear whether an agency's risk management allotment will be affected if it fails to provide timely notice to the Department of Financial Services when a claim for attorney fees is made.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.01; 119.011; 119.07; 119.0701; 119.12 and 286.011

This bill creates section 119.0702 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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LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: FAV | . | |
| 03/06/2014 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 46 - 69
and insert:

(3) (a) ~~If~~ Public funds may not be ~~are~~ expended by an agency
in payment of dues or membership contributions to a ~~for any~~
person, as defined in s. 1.01, unless the following ~~corporation,~~
~~foundation, trust, association, group, or other organization,~~
all the financial, business, and membership records of such
person are open for inspection and copying: ~~that person,~~



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11 ~~corporation, foundation, trust, association, group, or other~~
12 ~~organization which pertain to the public agency are public~~
13 ~~records and subject to the provisions of s. 119.07~~

14 1. All financial, business, and membership records that
15 pertain to the agency from which or on whose behalf the payment
16 of dues or membership contribution is made.

17 2. Any other record that a person has shared publicly, or
18 has presented to or shared with its members generally for no
19 cost other than the payment of dues or membership contributions.

20 (b) Information that is otherwise made confidential or
21 exempt pursuant to state or federal law is not subject to
22 paragraph (a).

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete lines 4 - 6

27 and insert:

28 policy on public records; requiring certain
29 information

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending s. 119.01, F.S.; revising the general state
 4 policy on public records; authorizing a person to make
 5 a request to inspect or copy a public record at
 6 certain agency offices; requiring certain information
 7 be open for inspection and copying if public funds are
 8 used in payment of dues or membership contributions;
 9 providing an exception; amending s. 119.011, F.S.;
 10 defining the terms "confidential and exempt" and
 11 "exempt"; amending s. 119.07, F.S.; providing that
 12 public records requests need not be in writing unless
 13 otherwise required by law; requiring the custodian of
 14 public records to provide a statutory citation to the
 15 requester if a written request is required;
 16 restricting the special service charge assessed by an
 17 agency in producing records; amending s. 119.0701,
 18 F.S.; revising contract requirements between a public
 19 agency and a contractor; creating s. 119.0702, F.S.;
 20 requiring each agency to provide training on the
 21 requirements of ch. 119, F.S.; amending s. 119.12,
 22 F.S.; specifying a reasonable cost of enforcement;
 23 providing that a party filing an action against
 24 certain agencies is not required to serve a copy of a
 25 pleading claiming attorney fees on the Department of
 26 Financial Services; requiring an agency to provide
 27 notice of such pleading to the department; authorizing
 28 the department to join the agency in defense of such
 29 suit; amending s. 286.011, F.S.; providing that a

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

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30 party filing an enforcement action against a board or
 31 commission of a state agency is not required to serve
 32 a copy of a pleading claiming attorney fees on the
 33 Department of Financial Services; requiring the board
 34 or commission to provide notice of such pleading to
 35 the department; authorizing the department to join the
 36 board or commission in defense of such suit; amending
 37 ss. 257.35, 383.402, 497.140, 627.311, 627.351,
 38 943.031, and 943.0313; conforming cross-references to
 39 changes made by the act; providing an effective date.

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

42
 43 Section 1. Subsection (3) of section 119.01, Florida
 44 Statutes, is amended to read:

45 119.01 General state policy on public records.—

46 (3) (a) Any person may make a request to inspect or copy a
 47 public record of an agency at any office of the respective
 48 agency that is open to receive and provide government services
 49 to the public. This subsection does not require that the
 50 requested record be provided at the office at which the request
 51 is made.

52 (b) If Public funds may not be ~~are~~ expended by an agency in
 53 payment of dues or membership contributions to a ~~for any~~ person,
 54 as defined in s. 1.01, unless the following ~~corporation,~~
 55 ~~foundation, trust, association, group, or other organization,~~
 56 all the financial, business, and membership records of such
 57 person are open for inspection and copying; that person,
 58 ~~corporation, foundation, trust, association, group, or other~~

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

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59 organization which pertain to the public agency are public
60 records and subject to the provisions of s. 119.07

61 1. All financial, business, and membership records that
62 pertain to the agency from which or on whose behalf the payment
63 of dues or membership contribution is made.

64 2. Any other record that a person has shared publicly, or
65 has presented to or shared with its members generally for no
66 cost other than the payment of dues or membership contributions.

67 (c) Information that is otherwise made confidential or
68 exempt pursuant to state or federal law is not subject to
69 paragraph (b).

70 Section 2. Section 119.011, Florida Statutes, is amended to
71 read:

72 119.011 Definitions.—As used in this chapter, the term:

73 (1) "Actual cost of duplication" means the cost of the
74 material and supplies used to duplicate the public record, but
75 does not include labor cost or overhead cost associated with
76 such duplication.

77 (2) "Agency" means any state, county, district, authority,
78 or municipal officer, department, division, board, bureau,
79 commission, or other separate unit of government created or
80 established by law including, for the purposes of this chapter,
81 the Commission on Ethics, the Public Service Commission, ~~and~~ the
82 Office of Public Counsel, and any other public or private
83 agency, person, partnership, corporation, or business entity
84 acting on behalf of any public agency.

85 (3) "Confidential and exempt" means a record or information
86 that, pursuant to a specific statutory exemption, is not subject
87 to inspection or copying by the public and may be released only

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88 to those persons and entities designated in the exemption.

89 (4) (a) (3) (a) "Criminal intelligence information" means
90 information with respect to an identifiable person or group of
91 persons collected by a criminal justice agency in an effort to
92 anticipate, prevent, or monitor possible criminal activity.

93 (b) "Criminal investigative information" means information
94 with respect to an identifiable person or group of persons
95 compiled by a criminal justice agency in the course of
96 conducting a criminal investigation of a specific act or
97 omission, including, but not limited to, information derived
98 from laboratory tests, reports of investigators or informants,
99 or any type of surveillance.

100 (c) "Criminal intelligence information" and "criminal
101 investigative information" ~~do shall~~ not include:

102 1. The time, date, location, and nature of a reported
103 crime.

104 2. The name, sex, age, and address of a person arrested or
105 of the victim of a crime except as provided in s. 119.071(2)(h).

106 3. The time, date, and location of the incident and of the
107 arrest.

108 4. The crime charged.

109 5. Documents given or required by law or agency rule to be
110 given to the person arrested, except as provided in s.
111 119.071(2)(h), and, except that the court in a criminal case may
112 order that certain information required by law or agency rule to
113 be given to the person arrested be maintained in a confidential
114 manner and exempt from the provisions of s. 119.07(1) until
115 released at trial if it is found that the release of such
116 information would:

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117 a. Be defamatory to the good name of a victim or witness or
118 would jeopardize the safety of such victim or witness; and

119 b. Impair the ability of a state attorney to locate or
120 prosecute a codefendant.

121 6. Informations and indictments except as provided in s.
122 905.26.

123 (d) With the exception of information in cases that are
124 barred from prosecution under s. 775.15 or another statute of
125 limitation, the term word "active" has shall have the following
126 meaning:

127 1. Criminal intelligence information is shall be considered
128 "active" if as long as it is related to intelligence gathering
129 conducted with a reasonable, good faith belief that it will lead
130 to detection of ongoing or reasonably anticipated criminal
131 activities.

132 2. Criminal investigative information is shall be
133 considered "active" if as long as it is related to an ongoing
134 investigation that is being conducted which is continuing with a
135 reasonable, good faith anticipation of securing an arrest or
136 prosecution in the foreseeable future.

137 3. In addition, Criminal intelligence information and
138 criminal investigative information are shall be considered
139 "active" if while such information is directly related to
140 pending prosecutions or appeals. The word "active" shall not
141 apply to information in cases which are barred from prosecution
142 under the provisions of s. 775.15 or other statute of
143 limitation.

144 (5)(4) "Criminal justice agency" means:

145 (a) A Any law enforcement agency, court, or prosecutor;

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146 (b) Another ~~Any other~~ agency charged by law with criminal
147 law enforcement duties;

148 (c) An Any agency having custody of criminal intelligence
149 information or criminal investigative information for the
150 purpose of assisting such law enforcement agencies in the
151 conduct of active criminal investigation or prosecution or for
152 the purpose of litigating civil actions under the Racketeer
153 Influenced and Corrupt Organization Act, during the time that
154 such agencies are in possession of criminal intelligence
155 information or criminal investigative information pursuant to
156 their criminal law enforcement duties; or

157 (d) The Department of Corrections.

158 (6)(5) "Custodian of public records" means the elected or
159 appointed state, county, or municipal officer charged with the
160 responsibility of maintaining the office having public records,
161 or his or her designee.

162 (7)(6) "Data processing software" means the programs and
163 routines used to employ and control the capabilities of data
164 processing hardware, including, but not limited to, operating
165 systems, compilers, assemblers, utilities, library routines,
166 maintenance routines, applications, and computer networking
167 programs.

168 (8)(7) "Duplicated copies" means new copies produced by
169 duplicating, as defined in s. 283.30.

170 (9) "Exempt" means a record or information that, pursuant
171 to a specific statutory exemption, is not subject to inspection
172 or copying by the public. However, such exempt records or
173 information may be disclosed or made available for inspection or
174 copying by the public at the discretion of the custodian of

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175 public records, who shall determine whether there is a statutory
 176 or other substantial need for disclosure.

177 ~~(10)(8)~~ "Exemption" means a provision of general law which
 178 provides that a specified record or meeting, or portion thereof,
 179 is not subject to the access requirements of s. 119.07(1), s.
 180 286.011, or s. 24, Art. I of the State Constitution.

181 ~~(11)(9)~~ "Information technology resources" means data
 182 processing hardware and software and services, communications,
 183 supplies, personnel, facility resources, maintenance, and
 184 training.

185 ~~(12)(10)~~ "Paratransit" has the same meaning as provided in
 186 s. 427.011.

187 ~~(13)(11)~~ "Proprietary software" means data processing
 188 software that is protected by copyright or trade secret laws.

189 ~~(14)(12)~~ "Public records" means all documents, papers,
 190 letters, maps, books, tapes, photographs, films, sound
 191 recordings, data processing software, or other material,
 192 regardless of the physical form, characteristics, or means of
 193 transmission, made or received pursuant to law or ordinance or
 194 in connection with the transaction of official business by any
 195 agency.

196 ~~(15)(13)~~ "Redact" means to conceal from a copy of an
 197 original public record, or to conceal from an electronic image
 198 that is available for public viewing, that portion of the record
 199 containing exempt or confidential information.

200 ~~(16)(14)~~ "Sensitive," as it relates to ~~for purposes of~~
 201 ~~defining~~ agency-produced software ~~that is sensitive~~, means only
 202 those portions of the data processing software, including the
 203 specifications and documentation, which are used to:

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204 (a) Collect, process, store, and retrieve information that
 205 is exempt from s. 119.07(1);

206 (b) Collect, process, store, and retrieve financial
 207 management information of the agency, such as payroll and
 208 accounting records; or

209 (c) Control and direct access authorizations and security
 210 measures for automated systems.

211 Section 3. Present paragraphs (c) through (i) of subsection
 212 (1) of section 119.07, Florida Statutes, are redesignated as
 213 paragraphs (d) through (j), respectively, present paragraph (i)
 214 of that subsection is amended, a new paragraph (c) is added to
 215 that subsection, and paragraph (d) of subsection (4) of that
 216 section is amended, to read:

217 119.07 Inspection and copying of records; photographing
 218 public records; fees; exemptions.—

219 (1)

220 (c) A public records request need not be made in writing
 221 unless otherwise required by law. If a written request is
 222 required by law, the custodian of public records must provide
 223 the statutory citation to the requester.

224 ~~(j)(4)~~ The absence of a civil action instituted for the
 225 purpose stated in paragraph ~~(h)~~ ~~(g)~~ does not relieve the
 226 custodian of public records of the duty to maintain the record
 227 as a public record if the record is in fact a public record
 228 subject to public inspection and copying under this subsection
 229 and does not otherwise excuse or exonerate the custodian of
 230 public records from any unauthorized or unlawful disposition of
 231 such record.

232 (4) The custodian of public records shall furnish a copy or

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233 a certified copy of the record upon payment of the fee
 234 prescribed by law. If a fee is not prescribed by law, the
 235 following fees are authorized:

236 (d) If the nature or volume of public records requested to
 237 be inspected or copied pursuant to this subsection is such as to
 238 require extensive use of information technology resources or
 239 extensive clerical or supervisory assistance by personnel of the
 240 agency involved, or both, the agency may charge, in addition to
 241 the actual cost of duplication, a reasonable special service
 242 charge, ~~which shall be reasonable and shall be based on the~~
 243 actual cost incurred or attributable to the agency for such
 244 extensive use of information technology resources or the labor
 245 cost of the personnel providing the service that is actually
 246 incurred by the agency or attributable to the agency for the
 247 clerical and supervisory assistance required, or both. The cost
 248 of clerical or supervisory assistance may not exceed the rate of
 249 the lowest paid personnel capable of providing such clerical or
 250 supervisory assistance, and excludes employer-paid health
 251 insurance premiums and other employer-paid benefits.

252 Section 4. Subsection (2) of section 119.0701, Florida
 253 Statutes, is amended to read:

254 119.0701 Contracts; public records.—

255 (2) In addition to other contract requirements provided by
 256 law, each ~~public agency~~ contract between a public agency and a
 257 contractor for services must include a provision that requires
 258 the contractor to comply with public records laws, specifically
 259 to:

260 (a) Keep and maintain public records that ordinarily and
 261 necessarily would be required by the public agency in order to

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262 perform the service.

263 (b) Provide the public with access to public records on the
 264 same terms and conditions that the public agency would provide
 265 the records and at a cost that does not exceed the cost provided
 266 in this chapter or as otherwise provided by law.

267 (c) Ensure that public records that are exempt or
 268 confidential and exempt from public records disclosure
 269 requirements are not disclosed except as authorized by law.

270 (d) Meet all requirements for retaining public records and
 271 transfer, at no cost, to the public agency all public records in
 272 possession of the contractor upon termination of the contract
 273 and destroy any duplicate public records that are exempt or
 274 confidential and exempt from public records disclosure
 275 requirements. All records stored electronically must be provided
 276 to the public agency in a format that is compatible with the
 277 information technology systems of the public agency.

278 (e) Notify the public agency's custodian of public records
 279 before denying a request to inspect or copy a record held by the
 280 contractor. This requirement does not impose any additional duty
 281 on the public agency.

282 (f) Notify the public agency if the contractor is served
 283 with a civil action to enforce the provisions of this chapter.
 284 This requirement does not impose any additional duty on the
 285 public agency.

286 Section 5. Section 119.0702, Florida Statutes, is created
 287 to read:

288 119.0702 Training of agency staff.—Each agency must provide
 289 training on the requirements of this chapter to each of its
 290 employees. The training provided shall be commensurate with an

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291 employee's duties.

292 Section 6. Section 119.12, Florida Statutes, is amended to
293 read:

294 119.12 Attorney ~~Attorney's~~ fees.-

295 (1) If a civil action is filed against an agency to enforce
296 the provisions of this chapter and if the court determines that
297 such agency unlawfully refused to permit a public record to be
298 inspected or copied, the court shall assess and award, against
299 the ~~agency~~ responsible agency, the reasonable costs of
300 enforcement ~~including reasonable attorneys' fees~~.

301 (2) The reasonable costs of enforcement include, but are
302 not limited to, reasonable attorney fees, including those fees
303 incurred in litigating entitlement to, and the determination or
304 quantification of, attorney fees for the underlying civil
305 action. At a minimum, the court shall award the reasonable costs
306 of enforcement for those counts upon which the plaintiff
307 prevailed.

308 (3) Notwithstanding s. 284.30, a party filing an action
309 against the state or any of its agencies covered by the State
310 Risk Management Trust Fund to enforce the provisions of this
311 chapter is not required to serve a copy of the pleading claiming
312 attorney fees on the Department of Financial Services. In order
313 to have attorney fees paid by the State Risk Management Trust
314 Fund, the agency against whom the action is brought shall
315 provide notice to the department of the pleading claiming
316 attorney fees upon receipt. The department may participate with
317 the agency in the defense of the suit and any appeal thereof
318 with respect to the attorney fees.

319 Section 7. Subsection (4) of section 286.011, Florida

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320 Statutes, is amended to read:

321 286.011 Public meetings and records; public inspection;
322 criminal and civil penalties.-

323 (4) (a) Whenever an action has been filed against a any
324 board or commission of a any state agency or authority or an any
325 agency or authority of a any county, municipal corporation, or
326 political subdivision to enforce the provisions of this section
327 or to invalidate the actions of any such board, commission,
328 agency, or authority, which action was taken in violation of
329 this section, and the court determines that the defendant or
330 defendants to such action acted in violation of this section,
331 the court shall assess a reasonable attorney ~~attorney's~~ fee
332 against such agency, and may assess a reasonable attorney
333 ~~attorney's~~ fee against the individual filing such an action if
334 the court finds it was filed in bad faith or was frivolous. Any
335 fees so assessed may be assessed against the individual member
336 or members of such board or commission; provided, that in any
337 case where the board or commission seeks the advice of its
338 attorney and such advice is followed, ~~no~~ such fees may not shall
339 be assessed against the individual member or members of the
340 board or commission. However, this subsection does shall not
341 apply to a state attorney or his or her duly authorized
342 assistants or any officer charged with enforcing the provisions
343 of this section.

344 (b) Notwithstanding s. 284.30, a party filing an action to
345 enforce the provisions of this section against a board or
346 commission of a state agency is not required to serve a copy of
347 the pleading claiming attorney fees on the Department of
348 Financial Services. In order to have attorney fees paid by the

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349 State Risk Management Trust Fund, the board or commission
 350 against whom the action is brought shall provide notice to the
 351 department of the pleading claiming attorney fees upon receipt.
 352 The department may participate with the board or commission in
 353 the defense of the suit and any appeal thereof with respect to
 354 the attorney fees.

355 Section 8. Subsection (1) of section 257.35, Florida
 356 Statutes, is amended to read:

357 257.35 Florida State Archives.—

358 (1) There is created within the Division of Library and
 359 Information Services of the Department of State the Florida
 360 State Archives for the preservation of those public records, as
 361 defined in s. 119.011 ~~s. 119.011(12)~~, manuscripts, and other
 362 archival material that have been determined by the division to
 363 have sufficient historical or other value to warrant their
 364 continued preservation and have been accepted by the division
 365 for deposit in its custody. It is the duty and responsibility of
 366 the division to:

367 (a) Organize and administer the Florida State Archives.

368 (b) Preserve and administer any such records ~~as shall be~~
 369 transferred to its custody; accept, arrange, and preserve them,
 370 according to approved archival practices; and allow ~~permit~~ them,
 371 at reasonable times and under the supervision of the division,
 372 to be inspected and copied.

373 (c) Assist the records and information management program
 374 in the determination of retention values for records.

375 (d) Cooperate with and assist, ~~insofar~~ as practicable,
 376 state institutions, departments, agencies, counties,
 377 municipalities, and individuals engaged in activities in the

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378 field of state archives, manuscripts, and history and accept
 379 from any person any paper, book, record, or similar material
 380 ~~that which~~ in the judgment of the division warrants preservation
 381 in the state archives.

382 (e) Provide a public research room where, under rules
 383 established by the division, the materials in the state archives
 384 may be studied.

385 (f) Conduct, promote, and encourage research in Florida
 386 history, government, and culture and maintain a program of
 387 information, assistance, coordination, and guidance for public
 388 officials, educational institutions, libraries, the scholarly
 389 community, and the general public engaged in such research.

390 (g) Cooperate with and, ~~insofar~~ as practicable, assist
 391 agencies, libraries, institutions, and individuals in projects
 392 designed to preserve original source materials relating to
 393 Florida history, government, and culture and prepare and publish
 394 handbooks, guides, indexes, and other literature directed toward
 395 encouraging the preservation and use of the state's documentary
 396 resources.

397 (h) Encourage and initiate efforts to preserve, collect,
 398 process, transcribe, index, and research the oral history of
 399 Florida government.

400 (i) Assist and cooperate with the records and information
 401 management program in the training and information program
 402 described in s. 257.36(1)(g).

403 Section 9. Subsection (9) of section 383.402, Florida
 404 Statutes, is amended to read:

405 383.402 Child abuse death review; State Child Abuse Death
 406 Review Committee; local child abuse death review committees.—

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407 (9) The State Child Abuse Death Review Committee or a local
 408 committee shall have access to all information of a law
 409 enforcement agency which is not the subject of an active
 410 investigation and which pertains to the review of the death of a
 411 child. A committee may not disclose ~~any~~ information that is not
 412 subject to public disclosure by the law enforcement agency, and
 413 active criminal intelligence information or criminal
 414 investigative information, as defined in s. 119.011 ~~or~~
 415 ~~119.011(3)~~, may not be made available for review or access under
 416 this section.

417 Section 10. Subsection (5) of section 497.140, Florida
 418 Statutes, is amended to read:

419 497.140 Fees.—

420 (5) The department shall charge a fee not to exceed \$25 for
 421 the certification of a public record. The fee shall be
 422 determined by rule of the department. The department shall
 423 assess a fee for duplication of a public record as provided in
 424 s. 119.07(4) ~~s. 119.07(1)(a) and (e)~~.

425 Section 11. Paragraph (b) of subsection (4) of section
 426 627.311, Florida Statutes, is amended to read:

427 627.311 Joint underwriters and joint reinsurers; public
 428 records and public meetings exemptions.—

429 (4) The Florida Automobile Joint Underwriting Association:

430 (b) Shall keep portions of association meetings during
 431 which confidential and exempt underwriting files or confidential
 432 and exempt claims files are discussed exempt from the provisions
 433 of s. 286.011 and s. 24(b), Art. I of the State Constitution.
 434 All closed portions of association meetings shall be recorded by
 435 a court reporter. The court reporter shall record the times of

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436 commencement and termination of the meeting, all discussion and
 437 proceedings, the names of all persons present at any time, and
 438 the names of all persons speaking. No portion of any closed
 439 meeting shall be off the record. Subject to the provisions of
 440 this paragraph and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(d)-(f)~~, the
 441 court reporter's notes of any closed meeting shall be retained
 442 by the association for a minimum of 5 years. A copy of the
 443 transcript, less any confidential and exempt information, of any
 444 closed meeting during which confidential and exempt claims files
 445 are discussed shall become public as to individual claims files
 446 after settlement of that claim.

447 Section 12. Paragraph (x) of subsection (6) of section
 448 627.351, Florida Statutes, is amended to read:

449 627.351 Insurance risk apportionment plans.—

450 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

451 (x)1. The following records of the corporation are
 452 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
 453 s. 24(a), Art. I of the State Constitution:

454 a. Underwriting files, except that a policyholder or an
 455 applicant shall have access to his or her own underwriting
 456 files. Confidential and exempt underwriting file records may
 457 also be released to other governmental agencies upon written
 458 request and demonstration of need; such records held by the
 459 receiving agency remain confidential and exempt as provided
 460 herein.

461 b. Claims files, until termination of all litigation and
 462 settlement of all claims arising out of the same incident,
 463 although portions of the claims files may remain exempt, as
 464 otherwise provided by law. Confidential and exempt claims file

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465 records may be released to other governmental agencies upon
 466 written request and demonstration of need; such records held by
 467 the receiving agency remain confidential and exempt as provided
 468 herein.

469 c. Records obtained or generated by an internal auditor
 470 pursuant to a routine audit, until the audit is completed, or if
 471 the audit is conducted as part of an investigation, until the
 472 investigation is closed or ceases to be active. An investigation
 473 is considered "active" while the investigation is being
 474 conducted with a reasonable, good faith belief that it could
 475 lead to the filing of administrative, civil, or criminal
 476 proceedings.

477 d. Matters reasonably encompassed in privileged attorney-
 478 client communications.

479 e. Proprietary information licensed to the corporation
 480 under contract and the contract provides for the confidentiality
 481 of such proprietary information.

482 f. All information relating to the medical condition or
 483 medical status of a corporation employee which is not relevant
 484 to the employee's capacity to perform his or her duties, except
 485 as otherwise provided in this paragraph. Information that is
 486 exempt shall include, but is not limited to, information
 487 relating to workers' compensation, insurance benefits, and
 488 retirement or disability benefits.

489 g. Upon an employee's entrance into the employee assistance
 490 program, a program to assist any employee who has a behavioral
 491 or medical disorder, substance abuse problem, or emotional
 492 difficulty which affects the employee's job performance, all
 493 records relative to that participation shall be confidential and

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494 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I
 495 of the State Constitution, except as otherwise provided in s.
 496 112.0455(11).

497 h. Information relating to negotiations for financing,
 498 reinsurance, depopulation, or contractual services, until the
 499 conclusion of the negotiations.

500 i. Minutes of closed meetings regarding underwriting files,
 501 and minutes of closed meetings regarding an open claims file
 502 until termination of all litigation and settlement of all claims
 503 with regard to that claim, except that information otherwise
 504 confidential or exempt by law shall be redacted.

505 2. If an authorized insurer is considering underwriting a
 506 risk insured by the corporation, relevant underwriting files and
 507 confidential claims files may be released to the insurer
 508 provided the insurer agrees in writing, notarized and under
 509 oath, to maintain the confidentiality of such files. If a file
 510 is transferred to an insurer, that file is no longer a public
 511 record because it is not held by an agency subject to the
 512 provisions of the public records law. Underwriting files and
 513 confidential claims files may also be released to staff and the
 514 board of governors of the market assistance plan established
 515 pursuant to s. 627.3515, who must retain the confidentiality of
 516 such files, except such files may be released to authorized
 517 insurers that are considering assuming the risks to which the
 518 files apply, provided the insurer agrees in writing, notarized
 519 and under oath, to maintain the confidentiality of such files.
 520 Finally, the corporation or the board or staff of the market
 521 assistance plan may make the following information obtained from
 522 underwriting files and confidential claims files available to

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523 licensed general lines insurance agents: name, address, and
 524 telephone number of the residential property owner or insured;
 525 location of the risk; rating information; loss history; and
 526 policy type. The receiving licensed general lines insurance
 527 agent must retain the confidentiality of the information
 528 received.

529 3. A policyholder who has filed suit against the
 530 corporation has the right to discover the contents of his or her
 531 own claims file to the same extent that discovery of such
 532 contents would be available from a private insurer in litigation
 533 as provided by the Florida Rules of Civil Procedure, the Florida
 534 Evidence Code, and other applicable law. Pursuant to subpoena, a
 535 third party has the right to discover the contents of an
 536 insured's or applicant's underwriting or claims file to the same
 537 extent that discovery of such contents would be available from a
 538 private insurer by subpoena as provided by the Florida Rules of
 539 Civil Procedure, the Florida Evidence Code, and other applicable
 540 law, and subject to any confidentiality protections requested by
 541 the corporation and agreed to by the seeking party or ordered by
 542 the court. The corporation may release confidential underwriting
 543 and claims file contents and information as it deems necessary
 544 and appropriate to underwrite or service insurance policies and
 545 claims, subject to any confidentiality protections deemed
 546 necessary and appropriate by the corporation.

547 4. Portions of meetings of the corporation are exempt from
 548 ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State
 549 Constitution wherein confidential underwriting files or
 550 confidential open claims files are discussed. All portions of
 551 corporation meetings which are closed to the public shall be

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552 recorded by a court reporter. The court reporter shall record
 553 the times of commencement and termination of the meeting, all
 554 discussion and proceedings, the names of all persons present at
 555 any time, and the names of all persons speaking. No portion of
 556 any closed meeting shall be off the record. Subject to the
 557 provisions hereof and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(d)-(f)~~,
 558 the court reporter's notes of any closed meeting shall be
 559 retained by the corporation for a minimum of 5 years. A copy of
 560 the transcript, less any exempt matters, of any closed meeting
 561 wherein claims are discussed shall become public as to
 562 individual claims after settlement of the claim.

563 Section 13. Paragraph (b) of subsection (9) of section
 564 943.031, Florida Statutes, is amended to read:

565 943.031 Florida Violent Crime and Drug Control Council.—

566 (9) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL MEETINGS
 567 AND RECORDS.—

568 (b) The Florida Violent Crime and Drug Control Council is
 569 ~~shall be~~ considered a "criminal justice agency," as that term is
 570 defined in s. 119.011 within the definition of s. 119.011(4).

571 Section 14. Subsection (7) of section 943.0313, Florida
 572 Statutes, is amended to read:

573 943.0313 Domestic Security Oversight Council.—The
 574 Legislature finds that there exists a need to provide executive
 575 direction and leadership with respect to terrorism prevention,
 576 preparation, protection, response, and recovery efforts by state
 577 and local agencies in this state. In recognition of this need,
 578 the Domestic Security Oversight Council is hereby created. The
 579 council shall serve as an advisory council pursuant to s.
 580 20.03(7) to provide guidance to the state's regional domestic

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581 security task forces and other domestic security working groups
582 and to make recommendations to the Governor and the Legislature
583 regarding the expenditure of funds and allocation of resources
584 related to counter-terrorism and domestic security efforts.

585 (7) AGENCY DESIGNATION.—For purposes of this section, the
586 Domestic Security Oversight Council ~~is shall be~~ considered a
587 criminal justice agency, as that term is defined in s. 119.011
588 ~~within the definition of s. 119.011(4).~~

589 Section 15. 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)

3/6/14
Meeting Date

Topic _____

Bill Number SPB 7064
(if applicable)

Name Kraig Conn

Amendment Barcode _____
(if applicable)

Job Title _____

Address 301 S. Broward St 300
Street
Tall FL 32301
City State Zip

Phone 222-9684

E-mail _____

Speaking: For Against Information

Representing Florida League of Cities

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.

CourtSmart Tag Report

Room: KN 412

Case:

Caption: Senate Governmental Oversight and Accountability Committee

Type:

Judge:

Started: 3/6/2014 9:04:44 AM

Ends: 3/6/2014 9:59:24 AM **Length:** 00:54:41

9:04:46 AM Meeting called to Order - Roll Call
9:05:26 AM Chair Ring turns the Chair over to Senator Hays
9:05:45 AM Tab 8-SB 948 by Senator Ring—Foreign Investments
9:07:12 AM Amendment 496202 by Senator Ring
9:07:36 AM Amendment 531610 by Senator Ring
9:08:20 AM Individuals waive in support
9:08:44 AM Senator Ring moves to report bill as a CS
9:08:47 AM Roll Call
9:09:13 AM CS/SB 948 reported favorably
9:09:38 AM Tab 1-SB 858 by Military and Veterans Affairs, Space, and Domestic Security—OGSR/Florida Defense Support Task Force
9:09:42 AM Ray Spaulding presents bill
9:11:53 AM Senator Hays moves to report bill as a CS
9:12:38 AM Roll Call
9:13:06 AM CS/SB 858 reported favorably
9:13:25 AM Tab 2-SB 616 by Senator Evers—Public Records/Toll Facilities
9:13:26 AM Dave Murzin presents bill
9:13:46 AM Amendment 528654
9:14:00 AM Senator Hays moves to report bill as a CS
9:14:02 AM Roll Call
9:14:22 AM CS/SB 616 reported favorably
9:14:42 AM Tab 4-SB 642 by Senator Brandes—Florida Transportation Corporation Act
9:14:50 AM Chris Spencer presents bill
9:15:26 AM Roll Call
9:15:41 AM SB 642 reported favorably
9:15:42 AM Senator Smith motions to be shown voting favorable for SB 948
9:16:32 AM Senator Bradley asks a question
9:17:04 AM Tab 5-SB 506 by Banking and Insurance—OGSR/Florida Insurance Guaranty Association
9:17:10 AM Roll Call
9:17:22 AM SB 506 reported favorably
9:17:34 AM Tab 6-SB 612 by Senator Hays—Preference in the Award of State Contracts
9:18:14 AM Mr. Watson answers
9:19:54 AM Amendment 110196 by Senator Hays
9:20:38 AM Senator Bradley
9:21:00 AM Senator Hays responds
9:22:49 AM Casey Cook, Florida League of Cities, speaks against bill
9:22:54 AM
9:24:07 AM Senator Hays clarifies there is no reference to 10% in the bill
9:24:49 AM Chair Ring
9:24:55 AM Richard Watson, Associated Builders and Contractors of Florida, speaks for the bill
9:27:00 AM Senator Bradley asks a question
9:27:11 AM Mr. Watson answers
9:27:29 AM Chair Ring
9:27:56 AM Mr. Watson responds
9:28:42 AM Chair Ring
9:29:02 AM Mr. Watson responds
9:29:48 AM Senator Montford
9:29:58 AM Mr. Watson
9:30:43 AM Senator Montford with a follow-up
9:30:51 AM Mr. Watson answers
9:31:12 AM Brian Pitts, Justice-2-Jesus, speaks on the bill
9:34:35 AM Senator Smith in debate

9:36:25 AM Senator Bradley in debate
9:36:47 AM Senator Hays closes on bill
9:39:39 AM Senator Smith asks a question
9:39:44 AM Senator Hays responds
9:40:24 AM Senator Bradley moves to submit bill as a CS
9:40:27 AM Roll Call
9:40:50 AM CS/SB 612 reported favorably
9:41:03 AM Tab 7-SB 292 by Senator Hays—Public Records/Prepaid Wireless E911 Fee
9:41:06 AM Senator Simmons motions to vote favorably on missed votes
9:41:42 AM (Strike All) Amendment 674716
9:43:35 AM Individuals waive in support
9:43:48 AM Senator Bradley moves to report bill as a CS
9:43:53 AM Roll Call
9:44:15 AM CS/SB 292 reported favorably
9:44:33 AM Tab 3-SB 256 by Senator Garcia—Public Records/Forensic Behavioral Health Evaluation
9:44:35 AM Jesus Tundidor presents bill
9:46:56 AM Amendment 751818
9:47:33 AM Substitute amendment 551036
9:48:53 AM Brian Pitts, Justice-2-Jesus, speaks on bill
9:51:47 AM Senator Smith
9:52:34 AM Mr. Tundidor closes
9:52:55 AM Senator Hays moves to report bill as a CS
9:53:04 AM Roll Call
9:53:21 AM CS/SB 256 reported favorably
9:53:41 AM Tab 9-SPB 7064 by Governmental Oversight and Accountability—Public Records and Meetings
9:54:23 AM Amendment 978404
9:54:58 AM Senator Bradley
9:55:20 AM Senator Ring responds
9:56:02 AM Senator Bradley
9:56:30 AM Senator Ring responds
9:57:02 AM Kraig Conn, Florida League of Cities, speaks on bill
9:57:54 AM Senator Ring moves to allow staff to make technical changes
9:58:05 AM Senator Ring moves to submit SPB 7064 as a committee bill
9:58:08 AM Roll Call
9:58:26 AM SPB 7064 reported favorably to submit as committee bill
9:58:41 AM Senator Bean motions to be reported favorably for bills
9:59:08 AM Meeting adjourned- Senator Simmons moves we rise